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ROB YORK

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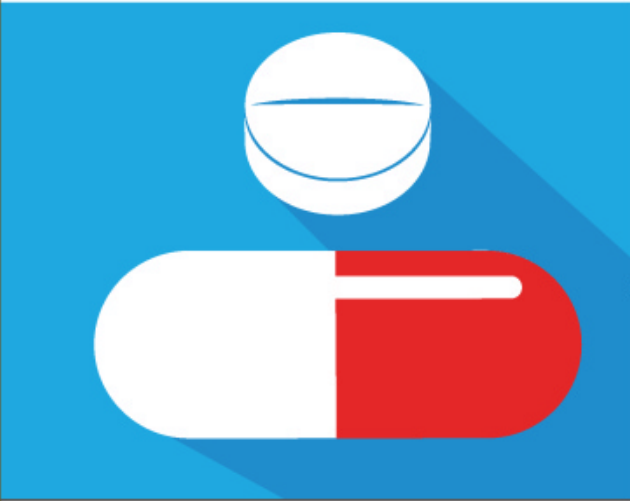
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CHARLES OLIVER
& PETER BAGGE

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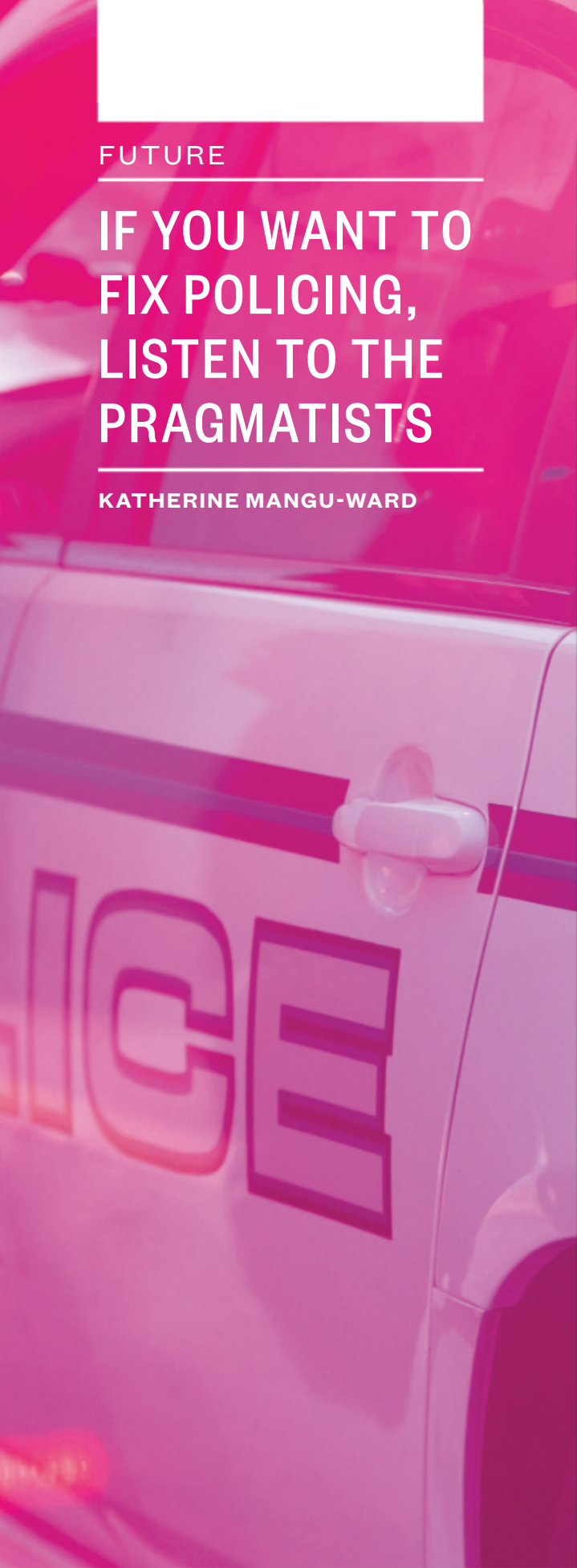
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FUTURE

IF YOU WANT TO FIX POLICING, LISTEN TO THE PRAGMATISTS

KATHERINE MANGU-WARD

NOBODY LIKES PRAGMATISTS. To the revolutionary, the pragmatist sounds too much like an apologist for the status quo. To those who fear rule by the angry mob, the pragmatist has granted the mob's premise and is simply bargaining about the timeline.

When absolutely everyone else is screaming, it can be hard to hear the calm, slightly nasal voice of the pragmatist explaining the procedures by which a cause might be realistically advanced. But in the cacophonous summer of 2020, with

protesters in the street and a pandemic raging, it looked for a moment like practical policing reform might actually make some headway. Wonky pragmatists from across the spectrum seemed to converge on both the need for and general outlines of reform. *National Review* published a piece called “Reform Police Training—Why It’s a Conservative Cause.” *Mother Jones* asked: “‘Qualified Immunity’ Gives Abusive Cops a Free Pass. Will the Supreme Court End It?” *The Washington Post* reported “Top CEOs Endorse Calls for Police Reform, Another Sign of Momentum on the Issue.” Bills popped up in the House, the Senate, and state legislatures, and governors and mayors announced their intention to make changes.

In that moment of optimism, *Reason* asked writers who have been on the criminal justice beat for years to lay out serious proposals for reforms with a fighting chance of being implemented in the coming months or years. The result is a robust list that includes calls to abolish qualified immunity (page 18), bust the police unions (page 22), better regulate the use of police force (page 25), rethink crisis response (page 28), end the drug war (page 32), release body cam footage (page 35), stop overpolicing (page 37), and restrict asset forfeiture (page 40). Each article begins with a quote from *Reason*’s archives, some from issues dating all the way back to the 1960s. *Reason* has been carrying this torch for a long time, in preparation for the moment when mainstream political culture and elected officials were ready to hear us out.

This summer, it looked like that moment had come. According to a Cato/YouGov poll conducted in July, 63 percent of Americans favor eliminating qualified immunity for police officers, which would make it easier to hold cops accountable for misbehavior and abuse. Another 62 percent favor limiting police unions’ bargaining power. A whopping 84 percent oppose erasing police records of misconduct every few years, a common clause in police union contracts. While Democrats are more likely to support such reforms, the number of Republicans open to these marginal changes was

surprisingly high—64 percent of GOP respondents, for instance, say police officers should be held accountable for misconduct even if they were “unaware at the time that their actions were illegal.”

Most of the folks at this summer’s street protests, of course, wanted to go much further, demanding everything from an end to racism (via methods that were often alarmingly TBD) to full Marxist revolution. But at least on policing, there was some crystallization, and a genuinely realistic slate of changes emerged.

THE TROUBLE WITH pragmatic, incremental reform is that it simply can’t produce the kind of immediate gratification that is required to keep the focus of people in the grip of culture war-induced ADHD. Chanting “Defund the police” is exciting; trying to figure out what that might look like across thousands of different jurisdictions is irksome. Spraypainting slogans on the plinth of a bust of Christopher Columbus gives a thrill; crafting legislation to hold officers accountable for misconduct in court is tricky and time-consuming.

Even more challenging, sometimes partial or badly executed reform is worse than nothing at all. Privatization without mechanisms for market competition and creative destruction can quickly become entrenched cronyism. Budget cuts without reductions in the scope of government create inefficiencies and delays. Rule changes done without proper legislative procedure create uncertainty, because they can be reversed when the political tides change.

But when agreement about the need to implement some reform, *any* reform, emerges, the pragmatist takes seriously the need to work with the tools that are available. Take body cameras, for instance: Many jurisdictions were surprisingly willing to require law enforcement officers to wear cameras on their lapels or install them in their patrol cars in recent years, due to a combination of public pressure, evolving attitudes toward surveillance in the workplace, and the belief by union leaders that the cams could serve to exonerate officers inaccurately accused of wrongdoing.

PHOTO

TAKE MY LIKENESS OUT TO THE BALLGAME

AS OF LATE July, Major League Baseball was doing its best to make lemonade out of COVID-19 lemons. When teams determined they couldn't host actual fans in their stadiums, many of them decided to sell seats to be adorned with a life-size cardboard cutout bearing a fan's photo. The seats range in price from \$25 to over \$200, depending on location. Of course, these sales won't replace lost gate or concessions revenue, but every bit of commerce—and baseball—helps. 📺



The hope was that cameras would reproduce the observer effect on officers, in which they would choose more ethical behavior because they knew they were being watched. That hope hasn't panned out. But that doesn't mean that we should turn away from body cams entirely. Instead, we can lean into the cameras as a tool for transparency. As part of a slate of reforms focused on accountability, cameras become a way for courts, citizens, and others to get the information they need in order to adjudicate whether police acted legally and morally in the course of their work. Paired with stronger freedom of information laws and the abolition of qualified immunity, body cams may yet deliver on their promise.

Likewise, use-of-force regulations have failed to prevent deaths and abuse in many places where they have already been implemented, but many municipalities are trying again. In San Diego, the chief of police formally ordered his officers not to use "carotid restraints" to cut off blood flow to the brain and knock out suspects. In Colorado, the County Sheriffs of Colorado, the Colorado Fraternal Order

of Police, and the Colorado Association of Chiefs of Police put out a joint statement calling for state lawmakers to require that other officers intervene when their colleagues use unreasonable force, paving the way for criminal charges. The combination of familiar reforms and a new cultural context may work where it hasn't before.

Other reforms, like busting police unions or ending the drug war or rolling back asset forfeiture, are more radical. But they have taken on new life in the context of more broadly shared concerns about police brutality.

LIKE SO MANY distracted boyfriends, America's wandering eye was drawn by more inflammatory topics, from fighting about which statues to yank down (see "American Idolatry Meets Woke Iconoclasm," page 58) to banning social media platforms where teenagers lip sync while shaking their butts.

Some people who took to the streets because too many Americans have died with police officers' knees on their necks or bullets in their backs have redirected their energy back to mainstream partisan

squabbling rather than specific policy reform. Faced with a real chance to improve the lot of some of the least well-off people in our society by reining in the power of the state, some online activists have opted to wage Twitter campaigns to get journalists and academics fired for bad tweets instead. Many mayors seem to have contented themselves with painting large street murals declaring that Black Lives Matter and calling it a day. And some people just got bored.

It's hard to stay mad about one thing when there are so many new things to get mad about every day, especially in the cascading semi-apocalypse of 2020. But a certain kind of sustained anger is vital to real reform. Fireworks are attention-getting and bonfires are fun, but it's the banked coals of a well-tended hearth that get the job done. As meaningful reforms keep working their way through the system, it's the pragmatists, not the firebrands, who will keep that flame alive. 🔥

KATHERINE MANGU-WARD is editor in chief of *Reason*.

FLORIDA LEADS THE WAY ON 2020 OCCUPATIONAL LICENSING REFORMS

ERIC BOEHM

OCCUPATIONAL LICENSING REFORM had another big, bipartisan year in state capitols—but no state cut more red tape than Florida. On the last day of June, Gov. Ron DeSantis, a Republican, signed the most sweeping occupational licensing reform bill in modern U.S. history. House Bill 1193 loosened or abolished rules governing more than 30 different professions, including cosmetologists, interior designers, and boxing referees. Once the law is in effect, thousands of Floridians will no longer have to jump through bureaucratic hoops in order to earn a living.

They won't have to fear the licensing cops either. In 2017, Heather Kokesch Del Castillo was threatened with hundreds of dollars in fines and up to a year in prison when Florida bureaucrats busted her for the crime of giving dietary advice without a license. Florida's new law specifies that people may provide "information...or advice concerning nutrition" without a license as long as they don't advertise themselves as medical professionals and as long as the services are not offered to individuals under the direct care of a physician.

The same law also allows barbers and cosmetologists licensed in other states to move to Florida and immediately get to work without going through a lengthy and unnecessary relicensing process. The previous requirement served no purpose other than limiting competition, since barbers do not forget how to safely cut hair when they move across state lines. Thankfully, these "reciprocity" reforms are growing in popularity.

The bill also repealed the occupational licensing requirement for interior designers. Florida had been "one of only six states to license the occupation," the Institute for Justice, which in 2009 sued over the requirement, said in a press release. "The required license has been replaced with a simpler registration requirement that allows registrants to

offer more services."

Florida isn't alone. On July 6, Missouri Gov. Mike Parson (R) signed into law a measure allowing workers with an out-of-state license in more than a dozen professions to obtain Missouri's equivalent without starting from scratch. Meanwhile, Pennsylvania's Republican-controlled legislature passed and Gov. Tom Wolf (D) signed a bill that strikes down the state's vague "good character" provisions that often blocked people with criminal records from getting permission to work. Under the new law, licensing boards will be able to block applicants who have been convicted of crimes related to the field in which they wish to work, but they won't be able to use irrelevant offenses from many years ago as justifications for denying licenses.

Even after the recent spate of bipartisan licensing reforms, many unnecessary, onerous rules are still on the books across the country. State lawmakers everywhere should aim to match—or exceed—Florida's example. 

ERIC BOEHM is a reporter at *Reason*.



IS COVID-19 CAUSING A NEW WAVE OF OPIOID-RELATED DEATHS?

MIKE RIGGS

ONE CONSEQUENCE OF the COVID-19 pandemic appears to be a spike in drug overdose rates.

The Washington Post reports that as of March 2020, combined fatal and nonfatal drug overdoses were nearly 20 percent higher than through the same month in 2019, according to data collected by the Overdose Detection Mapping Application Program. *The New York Times*, which collected data directly

from state and local health agencies, reported in July that fatal drug overdoses were up 13 percent compared to the first half of last year.

Physicians and harm reduction advocates say COVID-19 has disrupted medical care for substance use disorders and imposed financial crunches on treatment centers and local health agencies. Medical examiners interviewed by the *Post* pointed to an increase in synthetic drugs on toxicology reports.

But this COVID-19 story is really a prohibition story. While 2020's numbers, if they keep up, would likely be the worst ever, the U.S. also set a record for overdose deaths *last* year, according to data released by the Centers for Disease Control and Prevention (CDC) in July. "The increase in the last few months of 2019 was steep enough to push it over the top by a little more than 200 deaths," a CDC official told *Politico*.

With border and port traffic reduced, drugs like heroin and cocaine, which are generally shipped in large quantities, may be harder to move into the United States right now. But synthetic drugs that are far more potent, and thus more profitable to ship in small quantities, have been a major factor in overdose deaths for years. In 2018, the CDC

says that synthetic opioids such as fentanyl were involved in 68 percent of overdose deaths, an increase of 10 percent over 2017.

To the federal government's credit, COVID-19 has led to a few long overdue policy changes. In March, for example, the Drug Enforcement Administration relaxed restrictions on the prescribing of the medication-assisted therapy drugs methadone and buprenorphine, which people with opioid addiction can safely take to satisfy cravings. Doctors can now start a new patient on buprenorphine through telemedicine rather than an in-person visit, and continue an existing patient's methadone protocol through telemedicine.

There are other methods for harm reduction—even short of legalizing recreational opioid sales—such as authorizing more clean needle exchanges, passing more robust "Good Samaritan" laws to protect people who call 911 during an overdose, and allowing the construction of supervised injection facilities. Given the scale of the crisis, these potentially life-saving reforms are needed now more than ever. 

MIKE RIGGS is deputy managing editor at *Reason*.

Government Melts Over 270 Million Silver Dollars

But collectors get an unexpected second chance

It's a *crime*.

Most Americans living today have never held a hefty, gleaming U.S. silver dollar in their hands.

Where did they go? Well, in 1918, to provide aid to the British during WWI, the U.S. government melted down nearly half of the entire mintage—over 270 million silver dollars. If all those missing silver dollars could be stacked, they would tower over 400 miles into the sky! If laid in a chain, they would span 6,400 miles—enough to stretch from New York to Los Angeles more than 2½ times!

These vanished coins were not just any silver dollar—they were America's largest circulated coin, the beloved Morgan Silver Dollar. Each Morgan Dollar is struck from nearly an ounce of 90% fine silver and measures a massive 38.1mm in diameter. Morgan Silver Dollars were the engine of the American dream for decades. Created by famed American coin designer, George T. Morgan, they feature Lady Liberty's radiant profile and a majestic eagle, symbols of American strength and prosperity. Since their inception in 1878, they jingled in the pockets of famous and infamous Americans like John D. Rockefeller and Teddy Roosevelt, and desperadoes Jesse James and Al Capone. Today, Morgan Silver Dollars are one of the most collected coins in America.

Lady Liberty takes a Final Bow

Just three years after the massive meltdown, the government gave the Morgan Silver Dollar a final chance to shine. In 1921, facing a serious shortage, the mint struck Morgan Silver Dollars for one more brief, historic year. Today, the last-ever 1921 Morgan Silver Dollar belongs in the hands of collectors, history buffs, or anyone who values the artistry and legacy of this American classic.

A Never-Ending Hunt for Collector Quality

Millions *more* silver dollars were melted over the past ninety years and today, private hoards account for virtually all the surviving Morgan Silver Dollars. We should know—we're constantly on the hunt for these historic Silver Dollars, and jump at the chance to secure coins in collector-worthy condition. And what luck—we've managed to locate more than a thousand 1921 Morgan Silver Dollars, all in fantastic Extremely Fine (XF) condition. These coins actually circulated in American commerce nearly 100 years ago!



Saved from Destruction, but Bound for Extinction

It's been estimated that as few as 15% of all the Morgan Dollars ever minted have survived to the present day. And the number grows smaller with each passing year. The 1921 Morgan Silver Dollar is the last of its kind. But you can get one now before they're only a memory. Your chance to own this legend won't last long, so get yours today—and at a fantastic value!

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HOPE FOR FREE MARKET REFORM IN URUGUAY

DANIEL RAISBECK

ALTHOUGH THE GLOBAL media barely covered last year's elections in Uruguay, President Luis Lacalle Pou's victory was significant for ending 15 years of governance by the leftist Broad Front.

The president from that party from 2010 to 2015 was José "Pepe" Mujica, a former member of the violent Tupamaros guerrilla group who achieved international notoriety as a plainspoken man of the people who donated 90 percent of his salary to charity. Mujica's private austerity distracted from his reckless approach to public finances: According to Uruguayan writer Hana Fischer, his government oversaw "the largest increase in government spending since democracy was restored in Uruguay in 1985." In a power grab overruled by the country's highest court, Mujica sought to impose double taxation on large landholdings. He passed a "media law" that the influential newspaper *El País* called a threat to free speech. And although he legalized marijuana, Mujica included "a state-enforced oligopoly, production and consumption quotas, price-fixing, [and] coerced registrations," as one commentator explained.

The new president's style certainly contrasts with that of his Broad Front predecessors, class warrior Mujica and Tabaré Vázquez, a socialist doctor who served two terms in office in 2005–2010 and 2015–2020. The son of former president Luis Alberto Lacalle, Lacalle Pou is a 46-year-old lawyer and a skilled surfer who enjoys hunting wild boar. In 2019, he narrowly beat his Broad Front rival with a platform of decentralization, increased transparency, and promises to cut red tape. He even admitted to recreational drug use in his youth.

Lacalle Pou started his term by



refusing to invite the socialist dictators of Cuba, Venezuela, and Nicaragua to his inauguration. When the COVID-19 pandemic hit a few months later, Lacalle Pou rejected the strong statist measures suggested by his closest advisers. In a speech with nearly 2 million Twitter views as of mid-July (Uruguay has a population of only 3.5 million) Lacalle Pou explained that his government faced strong

pressure to create new taxes on wealth and businesses, suggestions that he "emphatically rejected." Entrepreneurs, he stated, "are the ones who will push the country forward. But in the pandemic, if we punish those who create businesses and jobs, those who produce, innovate, and trade, they will be left by the wayside," leaving everyone worse off as a result.

Instead of taxing wealth creators,

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Lacalle Pou decided to place an additional 20 percent tax on any state official—himself included—who earned over 1,900 U.S. dollars per month. “We wanted to signal that the state has to make an extra effort, not private individuals,” he said. “Because, once this is over, the state won’t provide for the population...it’s the individual who will rev up the engines and move the country onwards.”

Lacalle Pou’s defense of free market capitalism—extremely rare in Latin America—is no coronavirus fluke. Before the pandemic, he planned to ease the restrictions for setting up tax residency in Uruguay to attract foreign investors, a measure that is now law.

That’s not to say Lacalle Pou has ignored the public health component of the current crisis. Uruguay is the only country in the region that has executed a successful test-and-trace policy. As *Bloomberg News* notes, this allowed it to control the spread of the virus mostly “without a lockdown, harsh quarantines, or heavy-handed policing,” despite having the largest percentage of elderly citizens in Latin America. Although schools and restaurants closed their doors, most businesses were able to remain open, bolstering Lacalle Pou’s initiative to allow an unshackled private sector to lead the economy out of crisis.

Uruguayan libertarians are aware of their good fortune. Journalist Pris Guinovart says Lacalle Pou “is firmly convinced of the importance, value, and need of more freedom in Uruguay and in the rest of the world.”

For Fischer, Lacalle Pou’s sound policies as president have come as a welcome surprise. His previous career as a congressman, she explains, left her thinking he had few ideas of his own and that he had advanced in politics mostly by riding on his father’s coattails. “We now know that he does have his own ideas and that he is an ardent lover of liberty,” she says, “as he has proven with the way he handled the pandemic, without a mandatory lockdown and [by] appealing to individual responsibility.”

DANIEL RAISBECK is a senior fellow at Reason Foundation.

Illustration: Joanna Andreasson

IMMIGRATION

TRUMP’S VISA BAN WILL SLOW AMERICA’S RECOVERY

SHIKHA DALMIA

IN APRIL, AS COVID-19 spread through the United States, President Donald Trump imposed a two-month pause on nearly all legal immigration to protect America’s physical and economic health. He has now extended the ban until December and expanded it, while acknowledging that the changes are primarily about protectionism for American labor.

The original ban halted new green cards for anyone other than the children and spouses of American citizens, because, the order claimed, lawful permanent residents get instant “‘open-market’ employment authorization documents” that allow them to immediately compete with American citizens “for almost any job in any sector of the economy.” The latest ban also imposes a moratorium on temporary work visas for foreign techies, low-skilled nonagricultural workers, people with summer jobs, and intra-company transfers. America’s unemployment rate quadrupled between February and May, Trump proclaimed, so more foreign workers would “present a significant threat to employment opportunities for Americans.”

Foreign workers typically fill niches at both the top and bottom ends of the labor spectrum, where qualified Americans aren’t available or willing to take jobs. If there were a surfeit of such workers, the labor market would itself reduce foreign worker inflows, since existing labor and immigration laws already make it costly to hire a foreigner. But restrictionists argue that starving businesses of foreign workers will force them to

invest in training domestic workers or to start paying them more.

Yet the market cannot bear endless price increases. To control labor costs, businesses will automate what they can and outsource what they can’t, resulting in a bigger loss of American jobs.

The former happened after the end of the “bracero” program in 1964 that had allowed American farmers to hire around half a million Mexican guest workers on a seasonal basis. The small increase in wages that farms had to pay domestic workers evaporated quickly as machines replaced the lost Mexicans.

The latter will happen in the tech sector. Even when the United States’ overall unemployment rate in June touched 13.3 percent, that number was only 2.5 percent for computing jobs, according to the pro-immigration National Foundation for American Policy.

In 2004, when Congress slashed the high-skilled H-1B visa cap from 195,000 a year to less than half that, multinational companies started hiring more workers in their affiliates abroad, according to Wharton School professor of management Britta Glennon. Given that each H-1B supports 1.83 jobs for Americans, University of North Florida economist Madeline Zavodny has found that the net result of turning away foreign labor is greater unemployment—and lower wages—for native-born workers.

SHIKHA DALMIA is a senior analyst at the Reason Foundation.



IS JOHN ROBERTS THE NEW ANTHONY KENNEDY?

DAMON ROOT

WHEN ANTHONY KENNEDY retired from the U.S. Supreme Court in 2018, he enjoyed the distinction of having been denounced by every major political faction in the country. For conservatives, Kennedy was the activist judge who “invented” a right to gay marriage. For progressives, he was the corporate shill who authored *Citizens United*. For libertarians, he was guilty of both enabling eminent domain abuse and squashing the rights of local medical marijuana users in favor of a national drug control scheme. At one point or another, everybody had cause to hate him.

Is John Roberts the new Kennedy? As the Supreme Court’s 2019–2020 term came to its dramatic close in July, the current chief justice not only solidified his role as a swing voter in highly charged cases but managed to annoy practically everybody along the way.

Will the religious right ever forgive Roberts for siding with the Court’s Democratic appointees to strike down an anti-abortion law? In *Whole Woman’s Health v. Hellerstedt* (2016), the chief justice dissented when the Court overturned a Texas statute that required abortion providers to have admitting privileges at local hospitals. But in this last term’s *June Medical Services v. Russo*, Roberts did the opposite, concurring in a decision that voided a nearly identical abortion regulation from Louisiana.

“I joined the dissent in *Whole Woman’s Health* and continue to believe

that the case was wrongly decided,” Roberts wrote in a lone concurrence. However, “*stare decisis* requires us, absent special circumstances, to treat like cases alike,” he continued. “The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana’s law cannot stand under our precedents.”

Plenty of progressives praised Roberts for that. But their cheers turned to jeers when he delivered a huge victory just one day later for both school choice and religious liberty advocates. “A State need not subsidize private education,” Roberts wrote in *Espinoza v. Montana Department of Revenue*. “But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” The Court has “long recognized the rights of parents to direct ‘the religious upbringing’ of their children,” he observed. “Many parents exercise that right by sending their children to religious schools, a choice protected by the Constitution.”

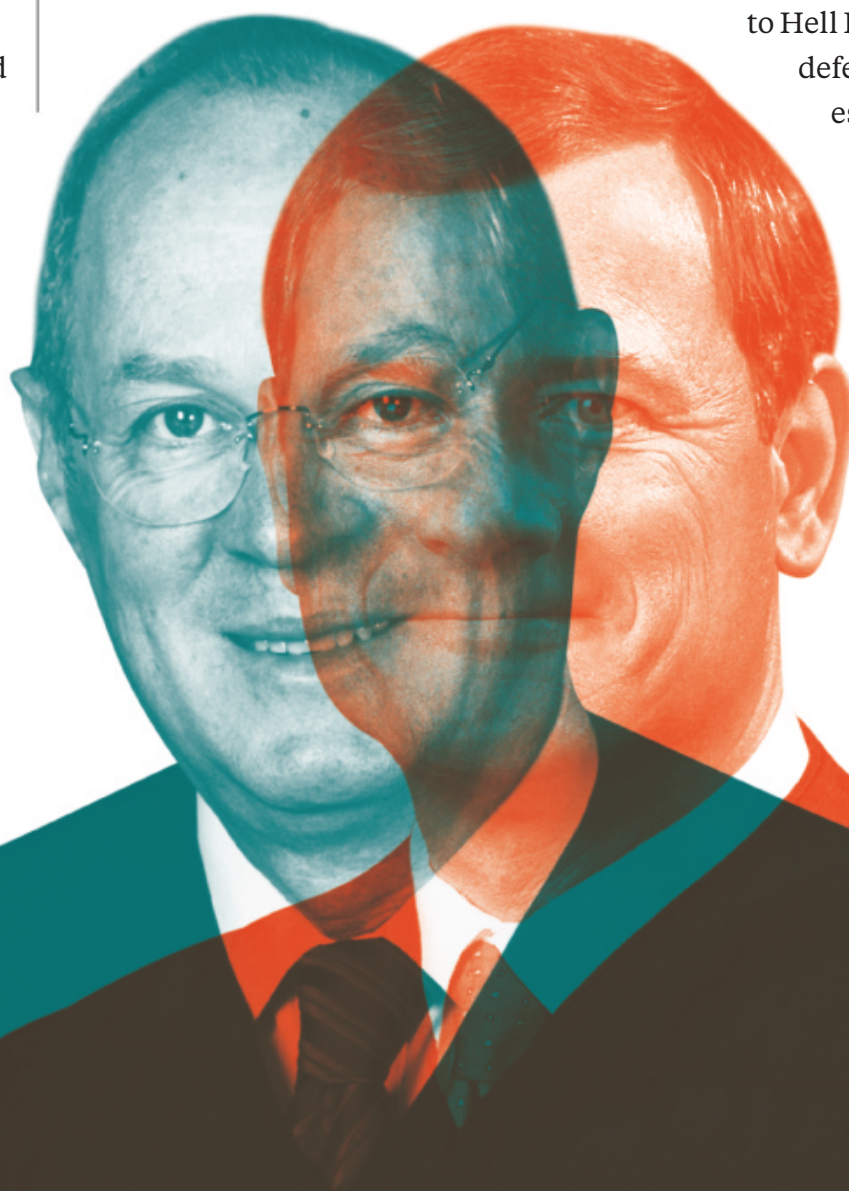
And then there was *Seila Law v. Consumer Financial Protection Bureau*, in which the chief justice led the Court in declaring the single-director structure of the Consumer Financial Protection Bureau (CFPB) to be unconstitutional. “The CFPB Director has no boss, peers, or voters to report to,” Roberts pointed out. “Yet the Director wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U.S. economy. The question before us is whether this arrangement violates the Constitution’s separation of powers.” Roberts held that it did. Not exactly a happy outcome for supporters of the administrative state.

Libertarians, of course, were criticizing Roberts before it was cool. In 2012’s *National Federation of Independent Business v. Sebelius*, Roberts characterized his vote to uphold the Affordable Care Act as a demonstration of conservative judicial restraint. “It is not our job to protect the people from the consequences of their political choices,” he wrote, invoking as a role model the early 20th century jurist Oliver Wendell Holmes Jr., who once declared, “If my fellow citizens want to go to Hell I will help them. It’s my job.” That

deferential approach is the antithesis of the libertarian legal movement’s vision of the judiciary as a strong bulwark against overreaching government.

On many of the biggest and most contentious legal issues of our time, the chief justice stands at the center of the SCOTUS storm. Like it or not, this is the Roberts Court now. 

Senior Editor DAMON ROOT is the author of *Overruled: The Long War for Control of the U.S. Supreme Court* (Palgrave Macmillan).



SHOULD WE QUIT TEACHING CURSIVE IN A DIGITAL AGE?

LENORE SKENAZY

FORGET MARX VS. Mises. You want to get a spirited debate going, ask pretty much anyone over the age of 8: Should kids still be taught cursive writing?

I posted this question to Facebook, and for the next hour or two, every time I checked in someone was busy typing a response. Which, I think, proves my side of the argument: These folks weren't penning flowing notes on scented paper. They were using the most dominant method of written communication today: keyboarding. When most of your life will be spent tapping keys, why bother to learn two different ways of writing with a pen or pencil?

Because it is super-important historically, physically, psychologically, therapeutically, and cognitively—that's why, said the pro-cursive folks. And as I talked to teachers, therapists, and education gurus, it started to seem to this cursive-challenged gal that perhaps they have a point.

One of script's biggest benefits, they said, is that because the letters are strung together, it makes reading and comprehending easier (yes, even though books are rendered in print).

"First graders who learned to write in cursive received higher scores in reading words and in spelling than a

comparable group who learned to write in manuscript," reported researchers in *Academic Therapy* in 1976. This could be because when a kid isn't lifting his pencil all the time, the linked letters provide "kinesthetic feedback about the shape of the words as a whole, which is absent in manuscript writing."

The gains can go beyond mere reading and spelling to processing whole thoughts. "Kids that write in cursive don't just form words more easily, they also write better sentences," claim the folks at Scholastic.

Is it possible we've been so focused on print that—like a toddler's lowercase *bs* and *ds*—we got it all backward? At many Montessori schools, that is the belief. There, kids learn cursive as early as age 3—before they learn print, says Jesse McCarthy, host of *The Montessori Education Podcast*. Then, using a "movable alphabet" of script letters, "you'll have a 4-year-old on the ground and they're basically writing sentences."

Barbie Levin, an occupational therapist in public and private schools, told me she has seen cursive work almost as therapy for some kids with coordination problems, learning disorders, or cognitive limitations that make it hard for them to learn how to print. "When a fourth grader is referred to me with poor handwriting," says Levin, "I can't unravel the handwriting habits of five years. But if it's within their capabilities...I teach them cursive. It's a fresh start, instead of harping on something they've given up on, and they are learning rather than unlearning. Also, they feel motivated because even 'the smart kids' (who they've been unfavorably comparing themselves to for years) don't

know how." Once her kids get the hang of script, she says, they often do better not just at classwork but even at things like tying shoes and buttoning buttons. It's a win all around.

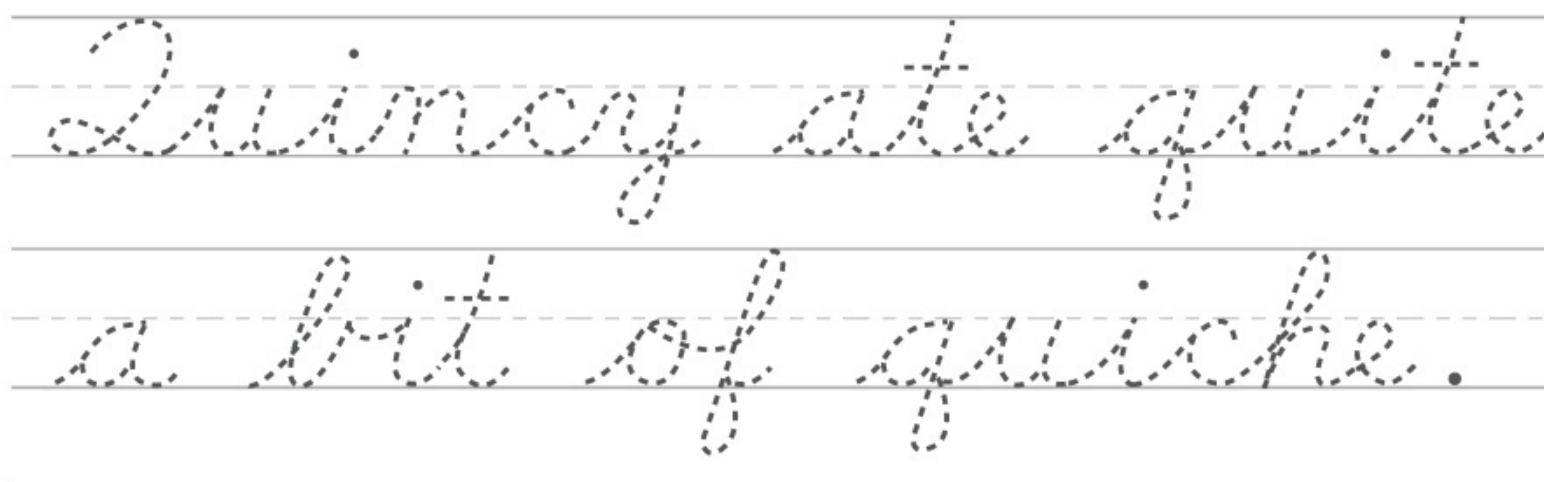
Beyond that, says retired elementary school teacher Michele Yokell, who was teaching an after-school class in cursive right up until COVID-19 hit, script "is part of our history—our heritage." You don't want kids squinting at the Constitution as if it's in cuneiform.

Yet despite all these boons, cursive seems to be going the way of the IBM Selectric—and for the same reason. While script may wire the brain, connect to history, and come more naturally to many kids, digital print is winning.

Cursive is not required by the Common Core curriculum, though a few states have mandated it. And a survey of handwriting teachers by Zaner-Bloser, a cursive textbook publisher, found that only 37 percent of them write exclusively in script. Another 8 percent write only in print, while most—55 percent—use a print/script mashup.

As do I. But 99 percent of my writing time involves a keyboard. So, sure, give kids a chance to learn script if print is tough for them, or if they want to research anything older than Betty Crocker recipes. Or maybe teach script and skip print. But teaching two ways to write the same letters when a third way—tap tap tap—is the real skill everyone needs? That seems as wacky as writing a capital Q that looks like a 2. 🍌

LENORE SKENAZY is president of Let Grow, a nonprofit promoting childhood independence and resilience, and founder of the Free-Range Kids movement.



GUN CONTROL PUTS YOUR LIFE AT RISK

In the 20th century, far more people were murdered by genocidal governments than by armed criminals.

DAVID B. KOPEL

ACCORDING TO GUN prohibitionists, Europe is much safer than the United States, because Europe has stricter gun control. In fact, the historical record shows that excessive gun control (as in Europe) is about a hundred times more deadly than “insufficient” gun control (as, supposedly, in the U.S.). While a lone criminal with a gun can be very dangerous, a criminal government with a disarmed population is the deadliest thing on Earth.

Let’s start with the data. If U.S. gun homicide rates had been as low as European rates in the 20th century, how many lives might have been saved? According to a 2018 article published in the *Journal of the American Medical Association*, in 1990—a bad year for violent crime in the United States—the age-adjusted U.S. firearms homicide rate was 5.57 per 100,000 population. That same year, the rate in Western Europe was 0.53 and the rate in Eastern Europe was 1.31, giving us a European average of 0.92.

The difference between the European rate and the American rate is 4.65 per 100,000. Since the U.S. population in 1990 was nearly 249 million, these data indicate that the U.S. had 11,785 more firearms homicides that year than it would have had if the rate had been as low as it was in Europe. If we apply the estimate of 4.65 additional gun homicides per 100,000 population to every year of the 20th century, taking into account changes in the U.S. population, we find that the United States had 745,162 more firearms homicides than it would have had under the European average.

For the sake of argument, we’ll assume that every excess American gun homicide would not have been a homicide if the United States had adopted European-style gun control. That is, we’ll assume that other lethal means would not have been substituted for firearms. We also won’t consider that many American gun homicides are justifiable self-defense. In other words, when a would-be killer is shot by a law enforcement officer or a citizen, we’ll consider the criminal’s death to be just as bad as the death of an innocent victim.

Finally, we’ll ignore the extensive evidence that nonfatal defensive firearm

use often prevents homicides and other crimes.

With the above assumptions, the failure to adopt European-style gun control would be responsible for almost three-quarters of a million excess deaths in the United States in the last century. That is a very large number. It is, however, two orders of magnitude smaller than the number of Europeans killed by governments during the same period.

International homicide statistics usually only count murders by individuals or small groups. A serial killer may murder two dozen people over the course of many years. A mass shooter may murder dozens at once. Those who use explosives or arson sometimes kill even more. But even in the aggregate, individual criminals or criminal gangs perpetrate vastly less homicide than do criminal governments.

In Europe in the 20th century, governments killed about 87.1 million victims, according to research by the late University of Hawaii political scientist R.J. Rummel. That figure does *not* include combat deaths, such as in World War I or II. It includes only the murder of civilians, from 61.9 million killed by the Soviet Union to 20.9 million killed by Germany. Over the long run, one’s risk of being murdered is much lower in the United States than in Europe. It’s no surprise that migration between the two has always been very heavily in one direction!

I am alive to write this article because my Jewish German and Lithuanian ancestors migrated to the United States in the 19th century. By doing so, they increased their risk of being shot by an individual criminal but drastically reduced their risk of being murdered by a criminal government. As we all well know, those risks did materialize in Germany (under the Nazis and the Communists) and in Lithuania (under the czars, the Nazis, and the Communists). Because governments are so much more effective at killing than are individual criminals—even looking at all individual criminals combined—the United States was much safer than Europe in the 20th century.

Rummel found that the less free the government, the more likely it is

to perpetrate domestic mass murder. Totalitarian regimes perpetrate by far the most; authoritarian regimes less so; and democratic ones least of all. Indeed, no democratic government has committed large-scale murder against a population that was able to vote.

If you could be sure that a given government would forever be democratic, there would be no need for arms to resist a possible domestic dictatorship. Unfortunately, certainty on that score is impossible. The list of nations to have maintained both independence and free government at all times since 1900 is short: Australia, Canada, Sweden, Switzerland, New Zealand, the United Kingdom, and the United States. That's just seven nations out of 196 worldwide.

Only a foolish version of American exceptionalism would imagine that the United States has been granted permanent immunity from the dangers of tyranny. Democracy was founded in Greece, yet that country has succumbed to dictatorship many times. Germany in 1900 was a progressive democracy and one of the most tolerant places in the world for Jews; a lot can change in a few decades.

ACCORDING TO GUN prohibitionists, armed victims cannot meaningfully resist a murderous dictatorship with weapons of war at its disposal. The dictators who do the murdering think just the opposite.

In 1942, Adolf Hitler explained the necessity of disarming his victims: "The most foolish mistake we could possibly make would be to allow the subjugated races to possess arms. History shows that all conquerors who have allowed their subjugated races to carry arms have prepared their own downfall by so doing. Indeed, I would go so far as to say that the supply of arms to the underdogs is a *sine qua non* for the overthrow of any sovereignty. So let's not have any native militia or native police."

Tyrants past and present have come from virtually every continent and ethnic background. Their ideologies have varied, but they are united by a number of common practices. They do not allow freedom of the press or an independent court

system. They attempt to bring religion under state control. And they claim for themselves a monopoly of force. Search the history of the world, from ancient times to the present, and you will not find many tyrants who deviated from the principle that the state must be stronger than the people.

Mass shootings by criminal governments occur predominantly in gun-free zones—places where the population has been disarmed. As soon as the Nazi invasion of the Soviet Union began on June 22, 1941, special S.S. units called *Einsatzgruppen* began assembling all the Jews or Gypsies from a village and marching them out of town. The victims could then be easily machine-gunned at once. Within a year, just 3,000 *Einsatzgruppen*, aided by a few thousand helpers from the German police and military, had murdered about 1 million people.

Regime change is difficult once a tyrant has taken power, as today's China and Cuba illustrate. So as an anti-tyranny tool, widespread citizen arms ownership works most effectively when it deters tyranny in the first place. Among the reasons there was no Holocaust in Switzerland was that the people there were heavily armed and organized in a very well-regulated militia. The German military almost certainly could have conquered its uncooperative neighbor to the south. Yet because of the costs that the Swiss militia would inflict on the *Wehrmacht*, Hitler never had the nerve to mount an invasion.

Even after mass murders have already begun, victims who obtain guns can save lives. During the Holocaust, armed Jews caused the Nazis much trouble—in the Warsaw Ghetto Uprising during Passover 1943 as well as in many lesser-known actions. The Nazi extermination camps of Sobibor and Treblinka were shut down forever because prisoners stole guns from the guards and led mass revolts. The Bielski commando unit in the forests of Belarus grew to 149 armed fighters and saved a thousand more Jews.

During World War I, when the gov-

ernment of the Ottoman Empire began murdering Christians, hundreds of thousands of lives were saved by armed resistance—which relied on guns that the Christians had secreted in defiance of confiscation orders.

"The gun has been called the great equalizer, meaning that a small person with a gun is equal to a large person," observed then-California Gov. Ronald Reagan in a 1975 article for *Guns and Ammo*, "but it is a great equalizer in another way, too. It ensures that the people are the equal of their government whenever that government forgets that it is servant and not master of the governed."

As the last century demonstrates, the short-term risks of a well-armed civilian population are far less than the long-term risks of a government that is stronger than the people. 

DAVID B. KOPEL is co-author of the textbook *Firearms Law and the Second Amendment* (Wolters Kluwer), from which this article is adapted.

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WILL-TO-POWER CONSERVATISM AND THE GREAT LIBERALISM SCHISM

STEPHANIE SLADE

IN THE LAST few years, a major fault line has opened up on the American political right: Call it the Great Liberalism Schism. On one side are those of us who remain committed to classical liberal norms and values such as due process, free trade, and religious freedom. On the other side is an increasingly restless group of writers and thinkers at places like *First Things* and the Claremont Institute who say America has tried classical liberalism—and it failed us.

These “post-liberals” believe it’s time for a conservative politics that stops worrying about protecting individual liberty and starts worrying about attaining the common good. Generally speaking, that means embracing “strong rule” by a government tasked, among other things, with “enforcing duties of community and solidarity in the use and distribution of resources,” as the Harvard law professor Adrian Vermeule put it in a March essay for *The Atlantic*.

There’s nothing wrong with caring about the common good. It’s just that the self-named Common-Good Conservatives don’t have a monopoly on the idea.

Just as there are many competing visions of the good life at an individual level, people frequently disagree about what a good society would look like. Most political leftists believe religiously affiliated employers should be required to pay for their workers’ birth control—and the language they use in defense of that position and others like it is nothing if not moral. Yet most people on the political right see that understanding of the common good as utterly mistaken. In a democratic society, how do you ensure that only the correct vision is coercively enforced?



At a sufficiently high level, we can all agree the concept is tied to human flourishing. The *Catechism of the Catholic Church* defines the common good as “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.” The dispute, then, is about *how* to help people thrive. For many of us, protecting individual liberty is crucial as both a component of and a requirement for achieving that goal.

A free society is in itself a good thing. That doesn’t mean freedom is the only good or even the highest good. But it is a good that must be included in any final accounting of the common good. To deny someone control over his own life is to assert your supremacy over him, violating his innate dignity as a person. The more coercion exercised, the greater the violation. While there may be pragmatic arguments against the institution of slavery, I trust we all recognize them as secondary. The first and most important reason to oppose human bondage, which is the opposite of human liberty, is that it’s evil. A freer society is a better society, all else being equal.

But freedom isn’t just a component of the common good. It’s a prerequisite for other components as well.

Any list of the social conditions that promote human flourishing would certainly include things like *justice for all* and *material abundance*. When classical liberals emphasize institutions such as due process and free trade, it’s precisely because we see them as means to these ends. Hence libertarians’ seeming preoccupation with what the economist Deirdre McCloskey has termed the

“Great Enrichment” of the last 250 years.

Classical liberals are not always comfortable employing common-good terminology, but creating the conditions under which people can thrive is undeniably the endgame of the classical liberal project. “We consider cooperation so essential to human flourishing that we don’t just want to talk about it,” wrote Cato Institute executive vice president David Boaz in his 2015 book *The Libertarian Mind* (Simon & Schuster). “We want to create social institutions that make it possible. That is what property rights, limited government, and the rule of law are all about.”

BUT IF THE so-called Common-Good Conservatives are not alone in their concern for the common good, then their chosen moniker obscures what differentiates them rather than illuminating it. What might be a better appellation for this group? I suggest, to borrow a concept from German philosopher Friedrich Nietzsche about human beings’ natural desire to expand and dominate, they would more accurately be described as Will-to-Power Conservatives.

In 1651, Thomas Hobbes described the precivilizational state of nature as “a war of all against all.” It appears some people believe the introduction of rule of

law did little to alter that fact. *New York Post* opinion editor Sohrab Ahmari, in a now-infamous 2019 essay for *First Things*, called upon conservatives to accept the hard truth “of politics as war and enmity.” All societies have rulers, the Will-to-Power Conservatives seem to be saying; what matters above all else is ensuring that *our* tribe is dominant.

Don’t take my word for it. In a recent symposium published by *The American Conservative*, editor of *American Affairs* Julius Krein (echoing his colleague Gladden Pappin) complains that “contemporary conservatism” lacks “a serious approach to wielding political power.” Hillsdale College’s David Azerrad argues that conservatives must learn to be “manly,” “combative,” and “comfortable” using “the levers of state power...to reward friends and punish enemies.” And Claremont’s Matthew J. Peterson insists that “conservatism must not merely make arguments...it must *act* on them, wielding ‘regime-level’ power in the service of good political order to do so.”

Ahmari in his 2019 essay mocked

classical liberals’ “great horror of the state, of traditional authority and the use of the public power to advance the common good.” He went on to urge conservatives to “fight the culture war with the aim of defeating the enemy and enjoying the spoils.”

And what would the Will-to-Power Conservatives do with state control once acquired? The specifics vary from person to person, but the policy agenda can be characterized as right-wing on social issues (blue laws; crackdowns on pornography) and left-wing on economics (industrial subsidies; generous unemployment insurance). At the nexus of the two are proposals to use the tax code to encourage larger families, in which women preferably work less outside the home.

That formulation—socially conservative and fiscally liberal—may seem to have an uncanny valley quality, because it’s the inverse of a common shorthand description of libertarianism. The Will-to-Power Conservatives make no bones about that: Their aim is “to challenge the moral-cultural dominance of radical liberal indi-

vidualism,” writes Krein. It is collectivist, if not authoritarian, by design.

Classical liberals seek a world in which everyone is free to live out his own conception of the good so long as he abstains from forcibly interfering with others’ ability to do the same. We’re therefore just as concerned with defending a person’s right to view pornography or buy alcohol on Sundays (to the chagrin of some traditionalists) as we are with defending an employer’s right not to be involved in the provision of his workers’ birth control (to the chagrin of many leftists). One’s freedom, as far as the law is concerned, does not depend on his using it to do what’s objectively moral.

For Will-to-Power Conservatives, just the opposite is true: By virtue of representing the correct vision of the good, they say, they have every right to use the coercive power of the state to interfere with others’ choices. In place of *equal rights under the law*, it’s *error has no rights*. This is no way to achieve the common good. 

STEPHANIE SLADE is managing editor at *Reason*.

ECONOMY

MORE MONEY DOES BUY MORE HAPPINESS

RONALD BAILEY

“DOES MONEY BUY happiness?” asked economist Richard Easterlin in a famous 1973 essay in *The Public Interest*. His conclusion was that once a certain level of economic development had been achieved, greater wealth and income did not lead to greater overall happiness. At an aggregate level, more money does not buy more happiness, he claimed.

A new study in the journal *Emotion* presents a challenge to the Easterlin finding. Jean Twenge, a psychologist at San Diego State University, and A. Bell Cooper, a data

scientist at Lynn University, examined data collected from 44,000 adult respondents to the General Social Survey (GSS) between 1972 and 2016 and found that more money does, in fact, correlate with more happiness.

The survey asks respondents to report their happiness on a three-point scale: “Taken all together, how would you say things are these days—would you say that you are very happy, pretty happy, or not too happy?” The researchers then parsed the data by income deciles, reporting that “twenty-one percent of those in the lowest decile described themselves as ‘very happy’ compared with 45 percent of those in the top decile; thus, those at the top of the income scale were more than twice as likely to be very happy than those at the bottom.”

Others have challenged Easterlin before. In 2012, Daniel Sacks of the University of Pennsylvania and Betsey Stevenson and Justin Wolfers of the University of Michigan published an analysis in *Emotion* finding that richer people are happier than poorer people within individual countries and that

people in richer countries are happier than people in poorer countries. Over time, they found, increased economic growth leads to increased happiness. “The data show no evidence for a satiation point above which income and well-being are no longer related,” the trio concluded.

Nevertheless, Easterlin and other scholars continue to argue that the “Easterlin Paradox” is real. Some cite 2010 research in the *Proceedings of the National Academy of Sciences* by Princeton economist and Nobelist Angus Deaton and his colleagues that *supposedly* found happiness does not increase once an individual’s income reaches about \$75,000 per year. What the study *actually* found is that more money does not affect the level of day-to-day joy, stress, and sadness but does correlate strongly with rising measures of overall life satisfaction.

The American editor Beatrice Kaufman once declared, “I’ve been poor and I’ve been rich. Rich is better.” It turns out that she was right. 

Science Correspondent RONALD BAILEY is the author of *The End of Doom: Environmental Renewal in the 21st Century* (St. Martin’s).

THE MEDIA'S NERVOUS BREAKDOWN OVER RACE

MATT WELCH

IF YOU WERE alive and on social media in early June, you were almost certainly swamped by scores of media and cultural organizations putting out statements, Instagram posts, and self-critical columns expressing solidarity in the fight against systemic prejudice.

"We recognize that there is much work to be done, and we are committed to engaging in this work to eradicate institutional

racism," announced the Poetry Foun-

dation, publisher of *Poetry* maga-

zine. "I have tried to diversify

our newsroom over the past

7 years, but I HAVE NOT

DONE ENOUGH," con-

fessed the editor in chief

of *Variety*. The women's

lifestyle publication

Refinery29, like many

websites, changed

its homepage color to

black instead of its usual

peppy pink.

Within days, the heads

of all those institutions were

out of a job.

In summer 2020, the American media experienced something like a collective nervous break-

down. Against the backdrop of

the coronavirus and associated

lockdowns, with whole sections of the industry teetering on the edge of collapse, newsrooms from coast to coast engaged in a series of internal revolts about race, defenestrating editors over everything from headlines to Halloween costumes.

Current and former employees launched self-styled "name-and-shame" campaigns on Twitter to out editors and organizations whose commitment to diversity and equity were deemed insufficient. A Broadway actress created a public spreadsheet called "Theaters Not Speaking Out"; participants were encouraged to "add names to this document who have not made a statement against injustices toward black people." Heads rolled at *The Philadelphia Inquirer*, the *Los Angeles Times*, *Bon Appétit*, the National Book Critics Circle, Chicago's Second City Theater, *The New York Times*, and scores of other cultural institutions and corporations.

"Institutional leaders, in a spirit of panicked damage control, are delivering hasty and disproportionate punishments instead of considered reforms," noted a group of 153 writers and academics, including such left-leaning luminaries as Salman Rushdie and Noam Chomsky, in a joint letter published online by *Harper's* magazine on July 7. "Editors are fired for running controversial pieces; books are withdrawn for alleged inauthenticity; journalists are barred from writing on certain topics; professors are investigated for quoting works of literature in class; a researcher is fired for circulating a peer-reviewed academic study; and the heads of organizations are ousted for what are sometimes just clumsy mistakes."

The *Harper's* letter,

like the actions

that pre-

cipitated

it, revealed

a split within

the broader intel-

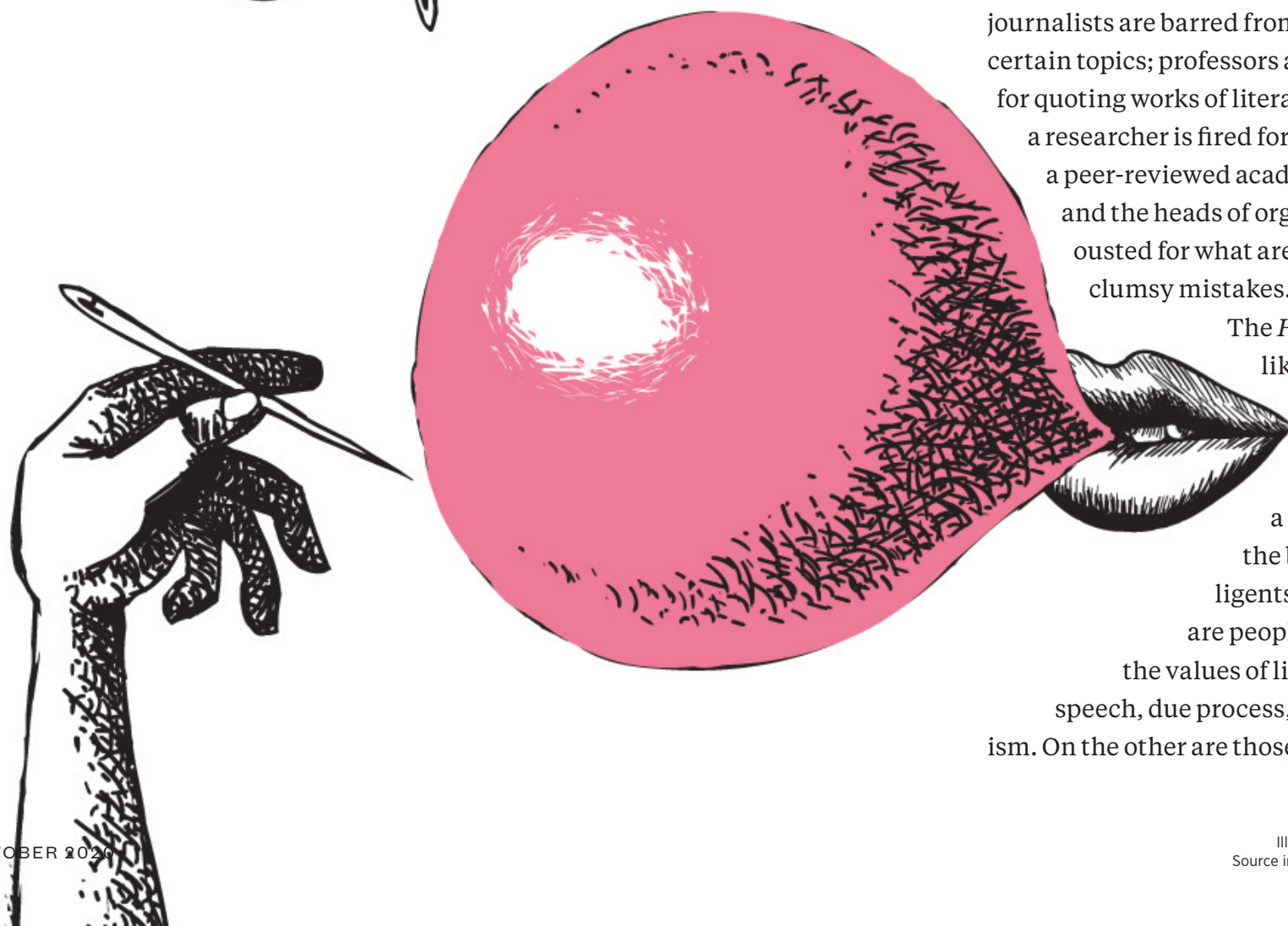
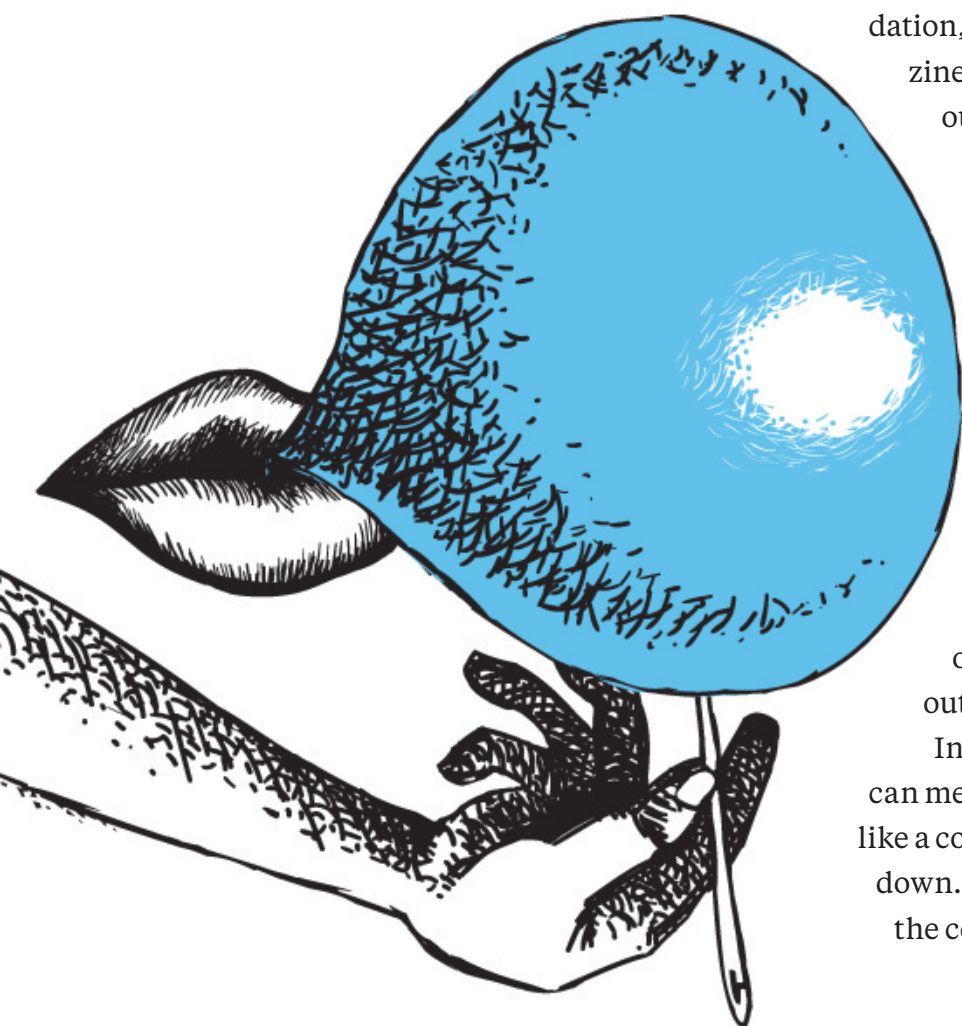
ligentsia. On one side

are people defending

the values of liberalism—free

speech, due process, individual-

ism. On the other are those chipping



away broadly at institutions they judge to be abetting a corrupted, discriminatory power structure. One side laments each broken egg; the other is busy making omelets.

That divide was on stark display within minutes of the letter's publication, as an entire generation of left-leaning commentators and journalists rose up nearly as one to douse the whole effort with bile. "The signatories, many of them white, wealthy, and endowed with massive platforms, argue that they are afraid of being silenced," snarled a counter-letter signed by 164 writers three days later. "The irony of the piece is that nowhere in it do the signatories mention how marginalized voices have been silenced for generations in journalism, academia, and publishing."

There is an asymmetry of approach between anti-liberals—of both left and right—and their increasingly alarmed critics. While the latter camp tends to treat controversies and individuals on a case-by-case basis, the former is forever trying to herd people into binary categories. In the words of bestselling author Ibram X. Kendi, "You're either racist or antiracist; there's no such thing as 'not racist.'"

The Manicheans have special contempt for those who refuse such designations, especially when they're otherwise on the same side of the political spectrum. That the *Harper's* authors came mostly from the left and prefaced their brief complaint with a swipe at President Donald Trump bought them no sympathy from their progressive tormentors. So signatory Yascha Mounk founds an earnest new publication called *Persuasion*, even while being dismissed by such leftists as *The Daily Beast's* Laura Bradley as belonging to a "coven of fools."

This witch-burning moment will hopefully recede, but the fuel in this accursed year will continue piling up. 

Editor at Large MATT WELCH is co-author, with Nick Gillespie, of *The Declaration of Independents: How Libertarian Politics Can Fix What's Wrong With America* (PublicAffairs).

SCIENCE

MORE COUNTRIES SHOULD PAY PLASMA DONORS

PETER JAWORSKI

LIFE-SAVING PLASMA THERAPIES are essential for many patients, but every year we flirt with a shortage. Plasma collected in the United States is the source material for more than 70 percent of the world's supply; humanity is nearly always one market disruption away from global catastrophe.

American dominance in this realm is explained by one simple fact: In the United States, it's legal to pay people for their plasma. Millions of Americans regularly give plasma in exchange for \$30–\$50 per donation. The average American donor gives 21.4 times per year. If you add plasma obtained from Germany, Austria, Hungary, and the Czech Republic—the other places where compensation is offered—paid plasma accounts for a staggering 89 percent of all the plasma used to make plasma therapies for the whole world.

Most foreign countries refuse to pay for plasma because of outmoded guidance from the World Health Organization. Its decades-old policy was initially motivated by the concern that payment would attract people from lower rungs of the socioeconomic ladder who are more likely to be carriers of transmissible infections. Those concerns no longer apply: There have been significant improvements in testing technology since the 1970s, and modern manufacturers now have the ability to use virus removal and inactivation techniques, rendering samples safer than

ever. Yet the organization's guidance has not changed.

Some theorize that we don't have more volunteer plasma donors because we just haven't asked in the right way. But millions have been spent on TV, radio, and newspaper advertisements encouraging unpaid donation. Others say paid plasma is exploitative, but they don't explain how prohibiting compensation would help people who currently feel the need to sell their plasma. Countries that have made the switch to paid donation have not seen altruism pushed out. The Czech Republic legalized compensation for plasma donations in 2008. Within three years, total donations increased sevenfold, making the country self-sufficient in plasma therapies.

Due to the coronavirus, plasma donations have fallen 15–20 percent across the United States. Between the depressed supply of plasma and the possibility that demand will rise as new COVID-19 treatments that rely on plasma are developed, the world could well be heading for a devastating shortfall. The problem could be quickly and cheaply remedied if it weren't for irresponsible guidance from global health bodies and an unfounded bias against paid donation. 

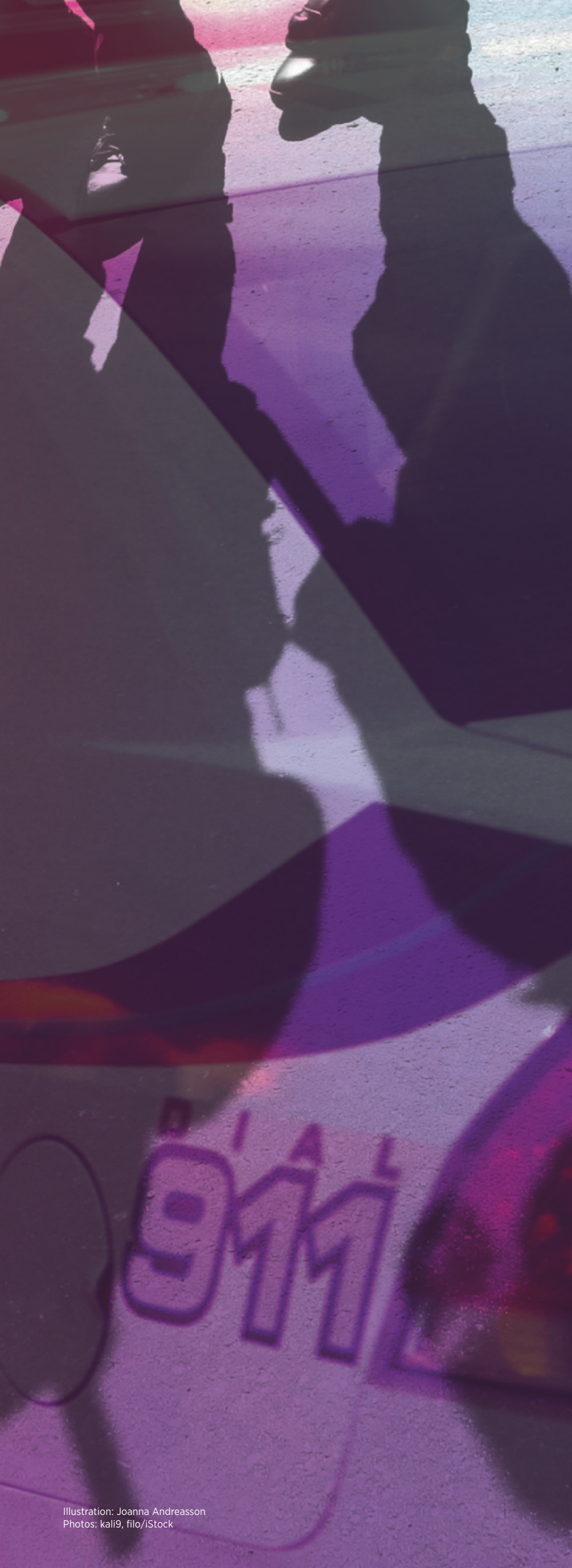
PETER JAWORSKI is a professor of ethics at Georgetown University's McDonough School of Business.



Abolish Qualified Immunity

THIS COURT-INVENTED DOCTRINE
SHIELDS BAD COPS FROM CIVIL
LIABILITY.

DAMON ROOT



“As it stands in America today, the police aid in the trampling of rights on such a massive scale that there is hardly a word sufficiently descriptive. Limited liability? The price of retribution due to the victims of the crimes committed by police on any single day would be beyond calculation, yet not only do these crimes go undenounced (for the most part), and the perpetrators, police and politicians, unpunished, but, even worse, the victims are forced through taxes to finance the operation and salaries of the criminals.”

LANNY FRIEDLANDER

“THE COPS: HEROES OR VILLAINS?”

NOVEMBER 1969

IN DECEMBER 2017, the U.S. Court of Appeals for the 6th Circuit ruled that a former Ferndale, Michigan, police officer named Lowell Phillips violated the Constitution when he shot and killed a fleeing suspect. Laszlo Latits “showed a persistent intent to flee but not an intent to injure, and never placed the public or the officers at imminent risk,” the court observed of the incident, which began with a traffic stop over a wrong-way turn onto a divided boulevard and ended four minutes later with Latits dead of multiple gunshot wounds to the chest and abdomen.

Phillips not only “repeatedly violated police procedures in both ramming Latits and running up to his car,” the 6th Circuit noted, but Phillips was ultimately fired by the Ferndale police department for that misconduct. “Considering the totality of the circumstances,” the appeals court noted, “we conclude that Officer Phillips’s use of deadly force was objectively unreasonable and in violation of Latits’s constitutional rights.”

But then the 6th Circuit switched gears and shielded the disgraced ex-cop from facing a federal civil rights lawsuit filed by the dead man’s family. “Caselaw existing at the time of the events,” the court said, “did not clearly establish the objective unreasonableness of Phillips’s actions in the circumstances of this case.”

Welcome to the bizarro world of qualified immunity, a place where the federal courts will acknowledge that a police officer violated the Constitution but then deem the officer not civilly liable for his unconstitutional actions because there was no prior court decision explicitly frowning on the same behavior.

According to the U.S. Supreme Court's 1982 decision in *Harlow v. Fitzgerald*, state actors are entitled to immunity from civil suits arising from their official conduct so long as the conduct that they're being sued over "does not violate clearly established statutory or constitutional rights." But as 5th Circuit Judge Don Willett, a leading critic of the Court's qualified immunity doctrine, has complained, what that means in practice is that "public officials [may] duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the *first* to behave badly."

Something has gone seriously wrong in our criminal justice system when the federal courts are running this kind of interference on behalf of blatantly unconstitutional police actions. What happened?

'SHALL BE LIABLE'

THE STORY BEGINS in 1871. In the aftermath of the Civil War, numerous state and local officials throughout the former Confederacy turned a blind eye (or worse) to the racist domestic terrorism perpetrated by the Ku Klux Klan and other groups. Congress responded to this dire state of affairs by enacting a series of so-called enforcement acts, each one rooted in Section 5 of the recently ratified 14th Amendment, which gave federal lawmakers the power "to enforce, by appropriate legislation, the provisions of this article." Among the provisions of the 14th Amendment was the requirement that states respect the constitutional rights of U.S. citizens.

Perhaps the most forceful of the enforcement acts was the Civil Rights Act of 1871, also known as the Ku Klux Klan Act. Among other things, it sought to hold state officials personally liable for the widespread civil rights violations that were occurring on their watch. It did so in part by declaring that "any person who, under color of any law, statute, ordinance, regulation, custom or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States shall...be liable to the party injured in any action at law, suit in equity, or other proper proceedings for redress."

"If the Federal Government cannot pass laws to protect the rights, liberty, and lives of citizens of the United States in the States," declared the bill's principal author, Massachusetts Rep. Benjamin F. Butler, a radical Republican and former Union major general, "why were guarantees of those fundamental rights put in the Constitution at all?"

Butler's handiwork lives on today in modified form in Section 1983 of Title 42 of the U.S. Code, more commonly known as Section 1983. It features language almost identical to the Ku Klux Klan Act.

Guess what the law does not say? "Neither version of the text, you will notice if you wade through them," University of Chicago law professor William Baude has observed, "makes any reference to immunity." That part came later, when the U.S. Supreme Court invented qualified immunity for cops in the mid-20th century.

'CLEARLY ESTABLISHED'

IT'S COMMON TO think of Chief Justice Earl Warren as one of the towering figures of legal liberalism, a jurist whose record is practically synonymous with what progressives like to call social justice. In the approving words of *The Oxford Companion to the Supreme Court of the United States*, "Whether one looks at the Court's record in matters of free speech, separation of church and state, apportionment, racial discrimination, or criminal procedure, Warren and his Court essentially asked the same questions: Is this fair?"

Alas, *fair* is not exactly the word anyone would choose to describe what happened in *Pierson v. Ray* (1967), the case in which Chief Justice Warren more or less concocted the idea of qualified immunity for cops. At issue was the 1961 arrest of the Rev. Robert Pierson and several other civil rights activists for entering the "Whites Only" facilities at a segregated bus stop in Jackson, Mississippi. In 1965, in a different case, the Supreme Court ruled against the anti-loitering law those activists were arrested for violating. Two years later, the Court weighed a lawsuit, filed by Pierson and his allies under Section 1983, against the local authorities who wrongfully shackled and jailed them.

Writing for the majority, Warren safeguarded the Mississippi cops from the lawsuit. At common law, he argued, "a peace officer who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved." The chief justice then grafted that reasoning onto Section 1983.

"A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does," Warren declared. "Although the matter is not entirely free from doubt, the same consideration would seem to require excusing him from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional."

Fifteen years later, the Court doubled down in *Harlow v. Fitzgerald*. "Government officials are entitled to some form of immunity from suits for damages," the Court said. "Public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." So long as government officials acting under color of law do "not violate clearly established statutory or constitu-

tional rights of which a reasonable person would have known,” the Court held, those officials “generally are shielded from liability for civil damages.”

‘AN ABSOLUTE SHIELD FOR LAW ENFORCEMENT’

THE PROBLEMS WITH qualified immunity are self-evident. Not only does the doctrine shield rights-violating officers from facing federal civil rights lawsuits, but it incentivizes police departments (which are also shielded from liability) to retain bad cops on the payroll. In effect, qualified immunity functions as an anti-accountability measure.

What can be done? There are two possible fixes. The first is for the Supreme Court to reverse or modify its misguided precedents.

At least two justices may be ready to do just that. The Court’s “one-sided approach to qualified immunity,” objected Justice Sonia Sotomayor in *Kisela v. Hughes* (2018), “transforms the doctrine into an absolute shield for law enforcement, gutting the deterrent effect of the Fourth Amendment.” To make matters worse, “it tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished.”

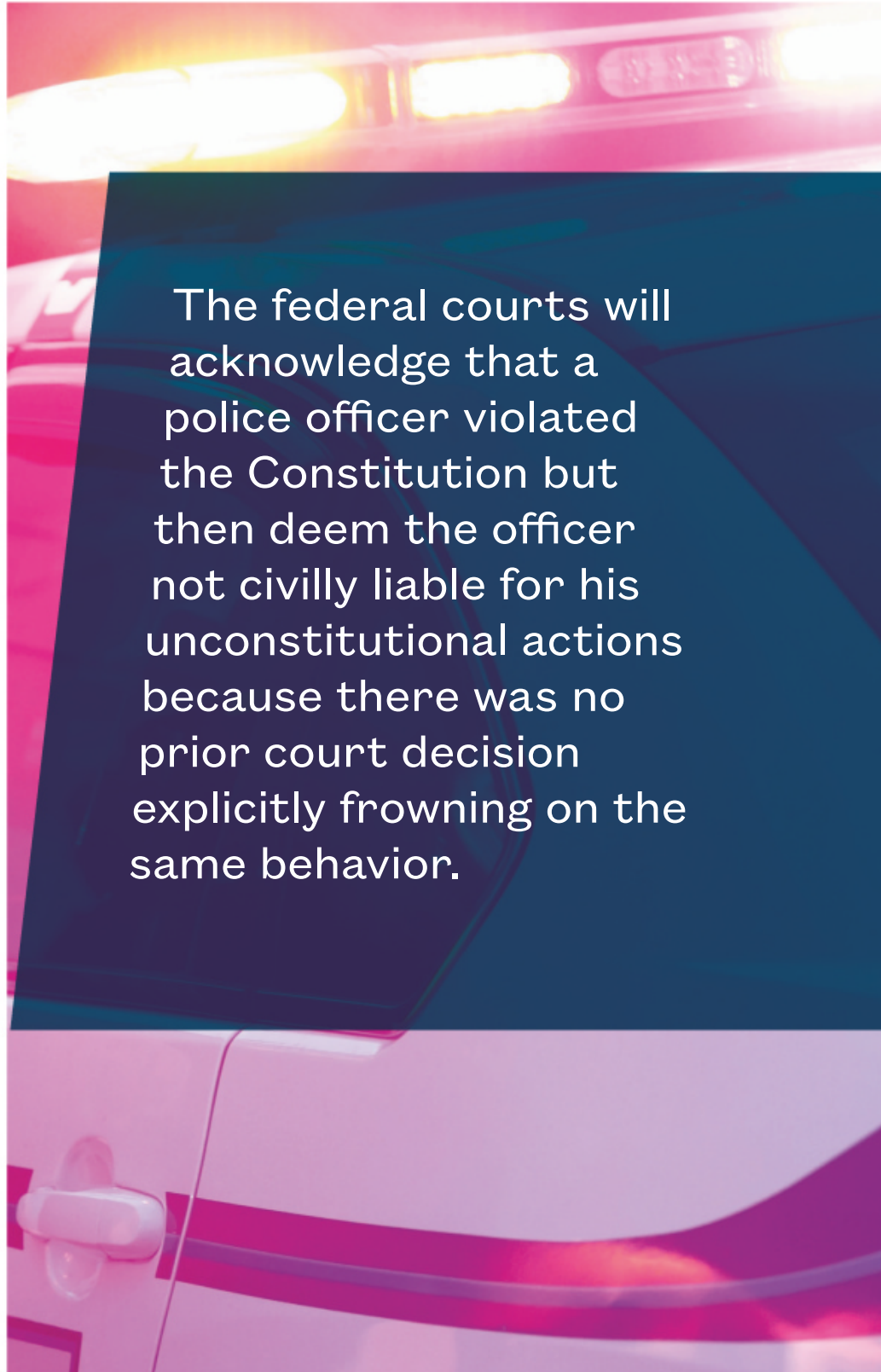
Justice Clarence Thomas, meanwhile, has suggested that the doctrine itself might be unlawful. In *Ziglar v. Abbasi* (2016), Thomas wrote a lone concurrence “to note my growing concern with our qualified immunity jurisprudence” and to urge the Court to “reconsider” that jurisprudence “in an appropriate case.”

Earlier this year, when the Court declined to hear *Baxter v. Bracey*, a case involving the grant of qualified immunity to officers who allegedly unleashed a police dog on a surrendering suspect, Thomas blasted his colleagues for refusing to get involved.

Section 1983 “ma[kes] no mention of defenses or immunities,” Thomas pointed out in his dissent. “Instead, it applies categorically to the deprivation of constitutional rights under color of state law.” In other words, the judicially invented doctrine does not match the text enacted by Congress. “There is likely no [legal] basis for the objective inquiry into clearly established law that our modern cases prescribe,” he wrote. “I continue to have strong doubts about our [Section] 1983 qualified immunity doctrine.”

The other fix requires action from Congress and the signature of the president. Because this doctrine arose via the judicial interpretation of a federal law, federal lawmakers need only pass a new statute to expressly repudiate what SCOTUS has done.

That approach is slowly gaining adherents. “Qualified immunity protects police and other officials from consequences even for horrific rights abuses,” observed Rep. Justin Amash (L-Mich.) when he introduced the Ending Qualified Immunity

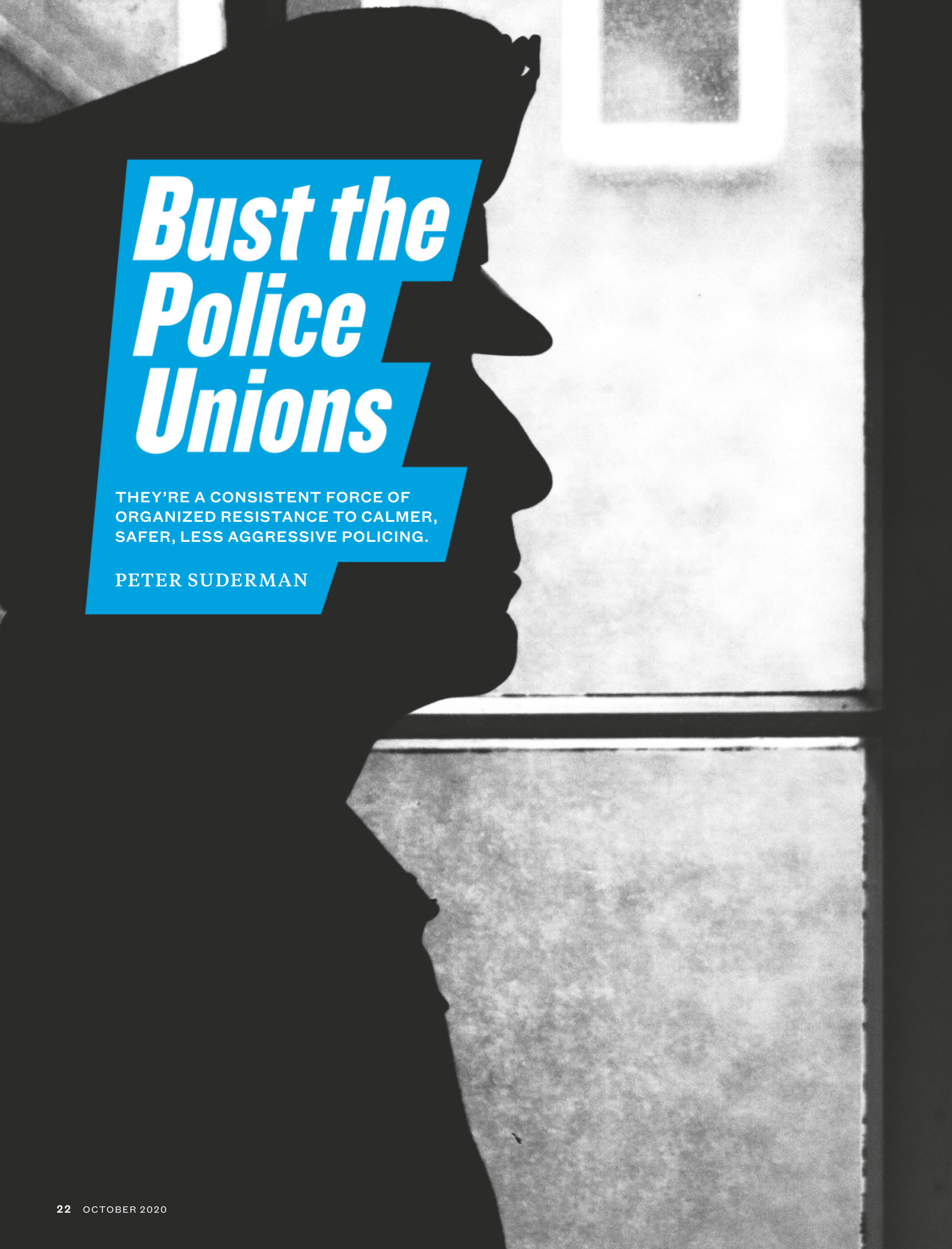


The federal courts will acknowledge that a police officer violated the Constitution but then deem the officer not civilly liable for his unconstitutional actions because there was no prior court decision explicitly frowning on the same behavior.

Act in the House of Representatives in June. Amash’s bill had garnered 65 co-sponsors at the time this article went to press, though a majority of Senate Republicans have declared the idea dead on arrival.

The fight against police misconduct is fast emerging as one of the greatest civil rights issues of our time. Holding abusive officers civilly liable in federal court is a necessary and long-overdue part of that fight. One way or another, qualified immunity for cops deserves to be abolished. 🗣️

Senior Editor DAMON ROOT is the author of the forthcoming *A Glorious Liberty: Frederick Douglass and the Fight for an Antislavery Constitution* (Potomac Books).



Bust the Police Unions

THEY'RE A CONSISTENT FORCE OF
ORGANIZED RESISTANCE TO CALMER,
SAFER, LESS AGGRESSIVE POLICING.

PETER SUDERMAN

“One of the major obstacles standing in the way of privatizing police operations or even substituting civilians for uniformed employees in nonpatrol positions is opposition from the police unions. Although many police organizations rally behind the cry that only a police officer can do a police officer’s job, the fact is that often they are simply trying to protect ‘uniformed’ slots and create as many openings as possible for fully trained police officers.”

THEODORE GAGE
“COPS, INC.”

NOVEMBER 1982

IN 2018, AS a gunman murdered 17 students at Marjory Stoneman Douglas High School in Parkland, Florida, Sgt. Brian Miller, a deputy with the Broward County Sheriff’s Office, hid behind his police cruiser, waiting 10 minutes to radio for help. For his failure to act, Miller was fired. The official cause was “neglect of duty.”

In May 2020, however, Miller was reinstated and given full back pay. His 2017 salary was more than \$138,000. Miller had challenged his firing, and he had done so with the full backing of his union.

Miller’s reinstatement is notable in that it relates to a high-profile case. But the essential story—an officer performs poorly, with fatal results, and the union comes to his defense—is all too common. That is what police unions do: defend the narrow interests of police as employees, often at the expense of public safety. They start from the premise that police are essentially unfireable and that taxpayers should foot the bill for their dangerous, and even deadly, negligence. And although unions are not the only pathology that affects American policing, they are a key internal influence on police culture, a locus of resistance to improvements designed to reduce police violence. To stop police abuse and remove bad cops from duty, police unions as we know them must go.

IN CASE AFTER case, police unions have defended deadly misdeeds committed by law enforcement. In 2014, for example, New York City police officer Daniel Pantaleo put Eric Garner in a chokehold for selling loose cigarettes. As a result of Pantaleo’s chokehold, Garner died, gasping the words, “I can’t breathe.”

The incident, caught on video, helped galvanize the Black Lives Matter movement. A grand jury declined to indict Pantaleo, but five years after Garner’s death, he was fired from the force following a police administrative judge’s ruling that the chokehold was, indeed, a violation of department policy.

Pantaleo had violated his police department’s policy in a way that resulted in the death of a man who was committing the most minor of offenses. Yet when Pantaleo was finally fired, Patrick Lynch, the president of the Police Benevolent Association, Pantaleo’s union, criticized the city for giving in to “anti-police extremists” and warned that such decisions threatened the ability of city police to carry out their duties. “We are urging all New York City police officers to proceed with the utmost caution in this new reality, in which they may be deemed ‘reckless’ just for doing their job,” Lynch said.

In essence, the police union’s position was: Officers of the law should not be punished for using prohibited techniques in ways that result in the deaths of nonviolent offenders, because to do so would unduly inhibit police work. A deadly violation of department policy is just police “doing their job.”

Too often, when police wantonly use deadly force, their unions slow or prevent justice. In March, plainclothes police raided a Louisville, Kentucky, home. They used a battering ram to break down the door in the middle of the night and then fatally shot one of the occupants, an unarmed emergency room tech named Breonna Taylor. Police were investigating two men believed to be selling pot out of another home, but a judge also allowed police to search Taylor’s home, because they believed the men were using it for package delivery. The raid was executed under a no-knock warrant that gives police permission to break into a private residence without announcing themselves.

Taylor’s death resulted in calls for the officers involved to be fired, but Louisville Mayor Greg Fischer warned that the process would be slow. A significant part of why he expected it to take so long, he said, was the city’s collective bargaining agreement with the police union. Fischer lamented the process, saying he recognizes “the system is not a best practice for our community.”

The city’s police union, meanwhile, has expressed outrage that a city council member described Taylor’s boyfriend, who fired on police during the raid, as a hero. This is the union’s focus: not demanding justice for a woman killed by police in her home but demanding an apology from a local politician who had the temerity to praise a citizen for defending himself and his girlfriend during a botched police operation. The union’s focus has been on protecting the police from public criticism, not on protecting the public from bad policing.

These are anecdotes, but other evidence bears the point out. The Police Union Contract Project, which collects and compares police union contracts across the country, notes that the

agreements are generally designed to make it difficult to hold police accountable, in part by giving them privileges that are not afforded to the broader public. For example, the contracts often prevent officers from being questioned quickly after incidents and often give them access to information not available to private citizens. Cities are often required to shoulder the financial burdens of officer misconduct, and disciplinary measures are often restricted. Forthcoming research out of the University of Victoria's economics department finds that the introduction of collective bargaining does not correlate with a reduction in total crime, but it does eventually correlate with higher numbers of killings by police, especially of minorities.

In other words, the research finds roughly what one would expect given a public sector workforce with unions set up to protect police officer compensation while limiting discipline and oversight. Police get paid more, yet the public is no safer—and it's at greater risk of violence by police.

FOR A STUDY in the ways that police unions can foster cultures of corruption and self-protection at the expense of public safety, consider the case of Camden, New Jersey. For decades, the city was among the most violent in the country, plagued by one of America's highest murder rates and commensurate levels of property crime. In 2012, *The New York Times* reported, with the murder rate approaching record highs, police acknowledged "that they have all but ceded these streets to crime." City officials said the police union was to blame. Union contracts made hiring officers prohibitively expensive. The cops on the payroll were being paid too much, and they weren't getting the job done.

So the city made a novel decision: Fire the police. All of them. That year, Camden began the process of terminating hundreds of officers and hiring a new force, controlled by the county and initially made up of less expensive, non-union labor.

It was a decision meant to address both budget and crime problems. Naturally, the police union opposed the plan, saying it was "definitely a form of union-busting." City officials, the union said, were relying on a reform that was "unproven and untested," putting faith in an agency that did not yet exist.

By many measures, however, the unproven and untested new police force worked. After Camden disbanded the city police department and reorganized it under the county with lower pay, while adding a focus on rebuilding trust with the community (which is among the nation's poorest), murders declined. The city is still dangerous compared to some others, but there's been clear progress in reducing crime and improving community relations. In May, as residents took to the streets to protest disparate and abusive treatment in black communities, Camden police officers marched with the protesters.

Eight years after the shakeup, Camden police are once again represented by a union. But the new labor representation signed

off on a use-of-force policy that is aimed at de-escalation. Police unions have tended to object to such proposals: In 2016, for example, after a think tank put forward a de-escalation policy suggesting that cops think about how the public might react to the use of violence by police, the vice president of the Association for Los Angeles Deputy Sheriffs called it "a ridiculous piece of claptrap," and the Fraternal Order of Police and the International Association of Chiefs of Police collaborated on a joint statement opposing the idea.

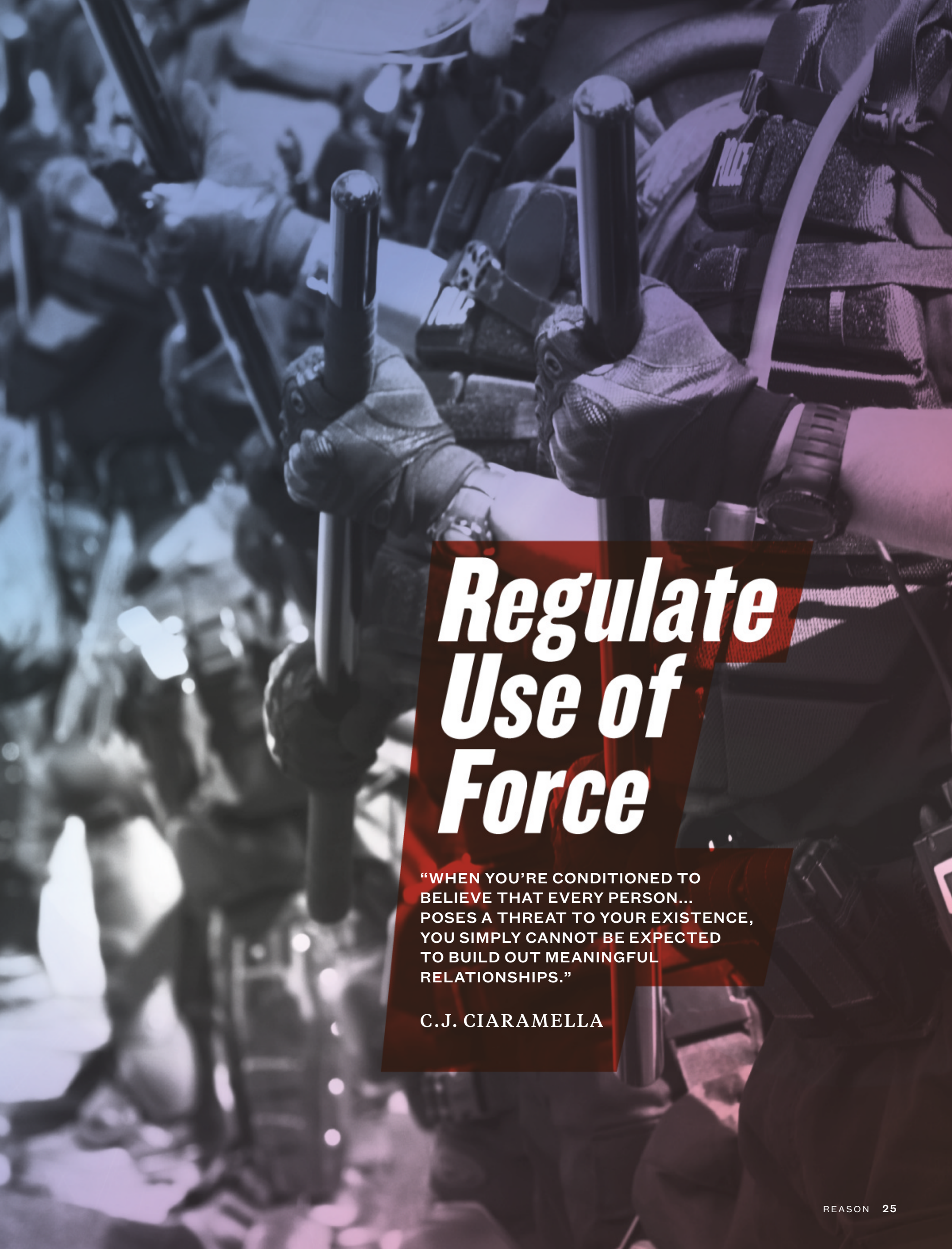
Unions aren't the only problem plaguing American police forces; there are plenty of other reforms worth pursuing, from demilitarization to ending qualified immunity. But unions have consistently proven to be a force of organized resistance to calmer, safer, less aggressive policing, in part because of how they perceive the nature of the job.

That has been true in Minneapolis, where the police killing of George Floyd has sparked nationwide protests this year. Bob Kroll, the president of the city's police union, wrote a letter to fellow officers describing Floyd, who was not resisting as an officer pressed a knee into his neck for nearly nine minutes, as a "violent criminal." Kroll has also referred to protesters as part of a "terrorist movement"; argued that officers were wrongly made to hold back on using "gas munitions and less-lethal munitions" to suppress riots; and complained that the officers fired for their involvement in Floyd's death were "terminated without due process."

Like other police union leaders, Kroll has resisted efforts to rein in police aggression. After Minneapolis Mayor Jacob Frey banned "warrior training" courses that teach violent confrontation, Kroll decried the ban and struck a deal for city cops to take the course anyway. In an interview with STIM radio in April, Kroll lamented the emphasis on training cops to de-escalate tense situations and cast the job as one for people who have a high threshold for violence: "If you're in this job and you've seen too much blood and gore and dead people, then you've signed up for the wrong job." These are the kinds of attitudes that police unions extol and reinforce. They contribute to a workplace culture that views policing as a job for individuals who are unbothered by the results of violence.

Police are public servants granted enormous power over the citizenry. They are tasked with protecting the public and serving their interests. Police unions, in contrast, are tasked with protecting police and serving *their* interests—even in direct contravention of serving the public. That distinction makes them a barrier to reforms aimed at improving public safety and increasing oversight of law enforcement. If union busting is what it takes to reduce this pernicious influence on policing, then it's time to bust some police unions. 

PETER SUDERMAN is features editor at *Reason*.



Regulate Use of Force

“WHEN YOU’RE CONDITIONED TO BELIEVE THAT EVERY PERSON... POSES A THREAT TO YOUR EXISTENCE, YOU SIMPLY CANNOT BE EXPECTED TO BUILD OUT MEANINGFUL RELATIONSHIPS.”

C.J. CIARAMELLA

“Through a combination of specific legislative acts, departmental procedures, monopolistic default, and the general effect and aura of the laws they enforce, police have come to a point where, to one degree or another, they are above the law. Not only may (and do) and must police squash rights within the law, but, the degree depending on circumstances and motive, they may also do so outside the law.”

LANNY FRIEDLANDER

“THE COPS: HEROES OR VILLAINS?”

NOVEMBER 1969

AS TENS OF thousands of Americans marched through the streets following the police killing of George Floyd in Minneapolis, city councils, state legislatures, and Congress all wrestled with how to address protesters’ demands for an end to police brutality. One problem is that the standards for how and when police can use force on someone are complicated, and strong-sounding reforms have a funny way of getting neutered at the street level where day-to-day police interactions occur.

New York City banned police from using chokeholds, for instance, but that didn’t stop New York Police Department (NYPD) officer Daniel Pantaleo from killing Eric Garner in 2014. Cities spent money on implicit bias and de-escalation training in the years following the rise of the Black Lives Matter movement, but Floyd still died with a knee on his neck. The number of fatal police shootings has hovered around 1,000 per year since 2015, according to a database created by *The Washington Post*.

Yet there are concrete policy changes that, taken together, could improve policing and reduce excessive force incidents.

DEFINING THE CONTINUUM OF FORCE

ONE OF THE most pressing demands from activists is to change departments’ use-of-force policies, which govern how and when police can initiate force against a person. Every department has its own procedures manual, and traditionally law-

makers and courts have been loath to second-guess how police do their job.

“Currently, what is generally the requirement in most police departments in most states is kind of a sliding scale [of force] that leaves a great deal of discretion to officers,” says Suzanne Luban, a clinical supervising attorney and lecturer at Stanford Law School. “So officers are told to use the degree of force they deem reasonably necessary under the circumstances, and usually the part that’s not said, but it is included in that, is to attain compliance.”

But as Luban notes, “compliance” isn’t always worth potentially maiming or killing someone, especially when the underlying crime is a petty misdemeanor. She cites cases like Israel Hernandez-Llach, an 18-year-old graffiti artist who died after being tased by Miami Beach police in 2013. The Miami state attorney found the use of force was legally justified, although the Miami Beach Police Department later settled a civil lawsuit filed by Hernandez-Llach’s family.

Campaign Zero, a nonprofit group that advocates policing reforms, has called for numerous changes to use-of-force policies beyond banning chokeholds. These include requiring officers to use de-escalation tactics and verbal warnings, defining what kind of force is appropriate for a given level of resistance, and increasing scrutiny of an officer’s tactics leading up to his or her use of deadly force.

Several states have already taken steps along those lines. In 2019, California enacted a law that raised the standard for when police officers can use deadly force. The new law allows such force only when the officer “reasonably believes” it is necessary to prevent death or serious injury, while the old standard allowed “reasonable force” during an arrest. (Notably, the legislation was watered down under pressure from police unions, leading Black Lives Matter groups to pull their support for it.)

Efforts to reform the use of force have exploded in the months following Floyd’s death in late May. *The Washington Post* reported that by July, 26 of the 65 largest U.S. cities had enacted bans on police chokeholds. Utah passed a bill that makes it a third-degree felony for a police officer to kneel on a suspect’s neck as a method of restraint and a first-degree felony if that action results in a person’s death. And an NYPD officer was recently charged for using a prohibited chokehold on a suspect.

Other cities and states are hoping to break down the infamous “blue wall of silence” that encourages officers to ignore misconduct. The Atlanta City Council passed a package of reforms that, among other things, created a statutory duty for officers to intervene when they witness excessive force by one of their colleagues. The Massachusetts Senate passed a similar requirement as part of a reform package.

Several municipalities and states have also considered or passed legislation banning police from shooting at moving cars

or firing “non-lethal” projectiles at protesters’ heads.

Yet the targeting of specific police tactics can only do so much, according to Luban. “Those are all important reforms,” she says, “but that’s not going to produce the holistic change that we need. It’s just reactive. What we need to do is address on multiple levels the lack of trust and accountability with police officers, and try to change the warrior culture that is in police departments.”

ADDRESSING THE WARRIOR MENTALITY

IN 2016, JERONIMO Yanez, a 28-year-old suburban Minneapolis police officer, fatally shot Philando Castile during a routine traffic stop. Two years before, Yanez had attended a class called “The Bulletproof Warrior” developed by military veteran David Grossman.

Grossman’s course is one of many offered to police officers around the country that promise to help cops make it home safe every night by instilling in them a warrior mentality. *The New York Times*, describing one of the booklets from Grossman’s class, reported that it “portrays a world of constant and increased threat to officers, despite more than two decades of declining violent crime in the United States.”

To prevent unnecessary loss of life, departments should emphasize de-escalation training and discourage or prevent officers from taking classes that cultivate itchy trigger fingers. The us vs. them mentality, fueled by overheated narratives about a “war on cops,” will be hard to shake, however.

In Minneapolis, about a year before Floyd’s death, Mayor Jacob Frey tried to ban the city police department from sending officers to warrior-mentality training courses. “When you’re conditioned to believe that every person encountered poses a threat to your existence, you simply cannot be expected to build out meaningful relationships with those same people,” Frey said.

In response, the local police union set up a fund to privately pay for officers to attend the courses.

Because use-of-force incidents often turn on the judgment and character of one officer in one of America’s roughly 18,000 law enforcement agencies, there is no cure-all law that will immediately stop brutality. But steps like strictly defining what levels of force are appropriate, raising the standards for the use of potentially deadly force, and keeping cops out of training that warps the way they look at everyone else could at least help create a framework for changing an internal culture that has for too long been left to police itself. 

C.J. CIARAMELLA is a criminal justice reporter at *Reason*.

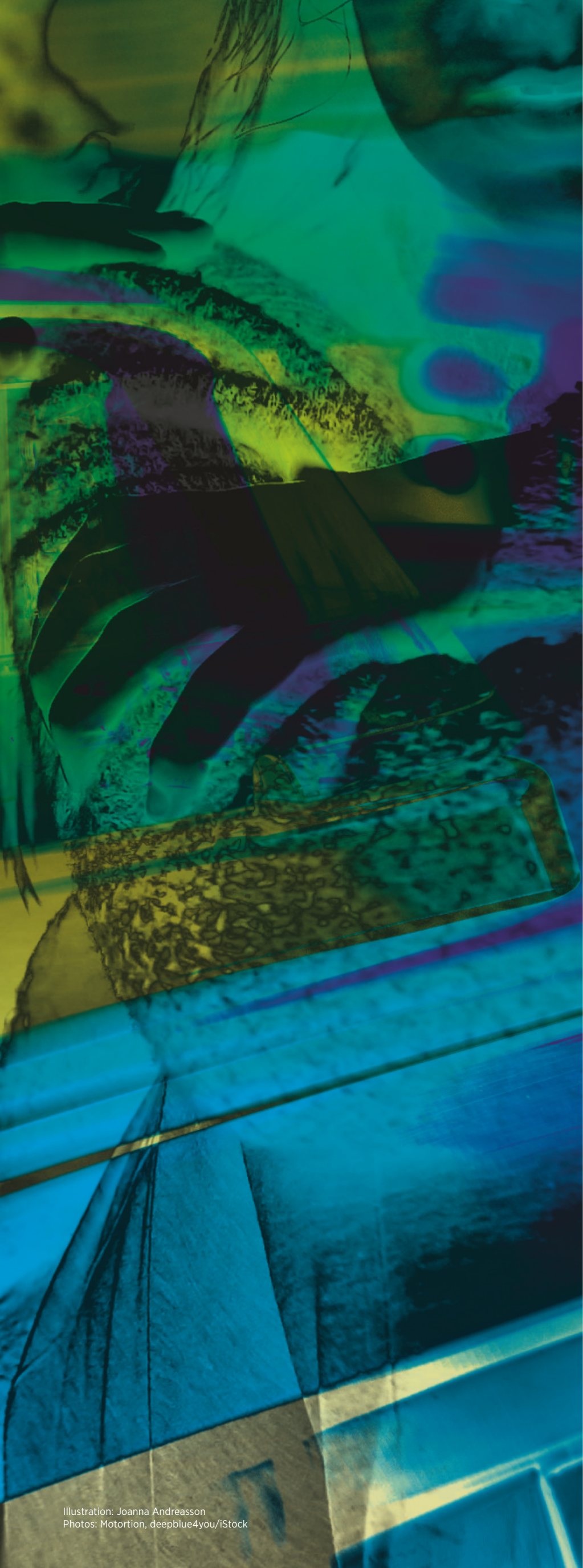


A hand holding a pen over a document with a red overlay containing text.

Rethink Crisis Response

PEOPLE WHO CALL 911 SHOULDN'T
GET AN ILL-TRAINED POLICE OFFICER,
ESPECIALLY WHEN THEY'RE DEALING
WITH A MENTAL HEALTH EMERGENCY.

SALLY SATEL



“The only thing we’ve accomplished is becoming the world’s largest incarcerator, sending people with mental health and addiction issues to prison...,” [NAACP director Robert] Rooks said.”

MIKE RIGGS

“BLACK BEHIND BARS”

NOVEMBER 2011

“PLEASE JUST SEND one police car, please don’t have your weapons drawn, please take him to the hospital.” These are the words that many families with a mentally ill loved one have learned to say when crisis strikes. Sabah Muhammad and her siblings have spoken them several times since 2007, the year her brother was diagnosed with paranoid schizophrenia. He had been a standout student and star running back at his high school near Atlanta, but everything changed around his 18th birthday. “He would become catatonic, barely moving, just staring into space,” Sabah explains. “Sometimes he locked himself in his room for weeks, refusing food, except to come out of his room at 3 a.m. to make toast that he blackened to carbon ‘to get the poison out.’”

Mute and malnourished, he would not allow family to take him to a psychiatrist—but he desperately needed help. The only option in the Muhammads’ Atlanta jurisdiction was a 911 call to report a psychiatric emergency, which tended to bring the police, multiple squad cars with lights flashing, and the ominous specter of armed agents encountering a young black man in a delusional state. So Sabah and her family would call the police, and pray.

The data justify their dread. Between 25 and 50 percent of all people killed annually by police are in the midst of a mental health crisis when they’re slain, according to a report by the Treatment Advocacy Center (TAC), a Virginia-based nonprofit dedicated to improving treatment for people with serious mental illnesses.

NATIONWIDE, A PERSON with a psychotic illness is 16 times more likely to be killed during a police encounter than a person with-

out such a condition. And even encounters that do not end in death have dire consequences such as violent confrontations, arrests, and incarceration.

Police are often the first responders because there is no one else who can attend to a person in crisis. “I don’t think we have any option but to be social workers, marriage counselors, coaches,” Joann Peterson, a retired New Haven police captain, told the *Connecticut Mirror* in June. At the same time, having police on the front lines of such incidents wastes community resources, overburdens law enforcement, and, when things go badly, criminalizes severe behavioral disruption due to illness.

THE ANSWER TO such tragedies seems obvious: reduce encounters between police and people with mental illness or, at least, change their nature. “Cop culture has always been, ‘We’re the people who respond to a crisis, jump out of the car, and take immediate action,’” New York Police Department Assistant Chief Matthew Pontillo told colleagues at a Police Executive Research Forum in 2015. “And we’re saying, ‘No, that’s not the correct paradigm anymore.’” While wholesale replacement of police officers with social workers is unrealistic, there are police-based programs that respond humanely to people who are in crisis.

The best-known example is Crisis Intervention Team (CIT) training for police. The program was created by authorities in Memphis, Tennessee, following the tragic death of 27-year-old Joseph DeWayne Robinson in 1987. Robinson’s mother called the police because her son was cutting himself with a large knife, inflicting over 100 wounds on his body, and threatening to kill himself. When police arrived, Robinson reportedly lunged with the knife, and they fired. According to some accounts, Robinson was high on crack; others said he had paranoid schizophrenia; together or separately, these states could make someone psychotic and agitated.

The disaster spurred the city of Memphis to develop a system for diverting people with mental illness from the criminal justice system. The Memphis Model of CIT training has three parts. The first involves 40 hours of training in mental health for self-selected police officers. Often, it turns out, those who enroll also have a mentally ill family member. That is true of about 45 percent of program participants, according to Police Lt. Col. Vincent Beasley. The second part entails clear lines of communication so that the specialized CIT will be dispatched to all mental health emergencies. The third is a mental health facility with a guaranteed acceptance policy where the police can bring a distraught individual. Today, there are 2,700 CIT programs, accounting for 15–17 percent of all police agencies in the country.

During CIT training, officers learn to recognize tense situations and to defuse them by not confronting people, yelling

directions, or making quick movements. The idea is to “slow the situation down,” to keep people from feeling cornered or under threat. (To reduce tension, police on the Tucson CIT drive unmarked cars and do not wear uniforms, for example.) Officers are trained to recognize the signs of psychosis and suicidal despair. They learn about post-traumatic stress disorder and extreme reactions to drugs, such as PCP or methamphetamine, that can produce intense agitation or paranoia. They understand that people with schizophrenia or people who are manic may be responding to hallucinations or may refuse to cooperate with police requests because voices tell them not to.

PERHAPS DEPLOYMENT OF a CIT-trained officer could have prevented the death of Queens resident George Zapantis in June. The 29-year-old man, who suffered from bipolar illness, was dressed as a gladiator and wielding a large sword in his mother’s basement. Police tased him multiple times after a neighbor called them, and he died of a heart attack.

Perhaps a different response would have saved Tony Timpa, 32, who called Dallas police from the parking lot of a porn shop in 2016. Off his antipsychotic medication, Timpa was afraid and anxious. Police arrived to find him already handcuffed by security guards of a nearby store. Yet in a sickening foreshadowing of George Floyd’s death, they had him lie face down, and an officer pressed a knee into his back for 15 deadly minutes.

Or perhaps better training would have discouraged police from fatally shooting 29-year-old Osaze Osagie, who had schizophrenia and was autistic, in 2019. When officers arrived at his apartment near Penn State, at the behest of his worried family, Osagie bolted out the door holding a knife. In the chaos, one of the officers opened fire.

Data on the CIT program offer mixed reassurance. A 2014 meta-analysis revealed no differences in arrests or use of force between officers who were and who were not trained; a 2019 review of research found rampant variability within training programs; and another analysis, from the Police Executive Research Forum, found that participants sometimes spent as little as eight hours in training. In New York City, where half of the police force has undergone CIT training since 2015, 16 people with mental illness have been killed in encounters with law enforcement since the training began, exceeding the number killed in the five years prior to initiation of the program.

The problem, scholars conclude, is poor fidelity to the three-part Memphis Model. When CITs operate within small regions with close adherence to the parameters—most notably, when they’re paired with fortified community-based mental health services—they tend to be more effective. San Antonio, for example, built a “Restoration Center” for psychiatric and substance abuse emergencies and a 22-acre campus for short-term inpatient stays with detox units and a medical clinic. Police were

then able to divert more than 100,000 people from jail and emergency rooms to treatment between 2008 and 2016.

Miami-Dade is a large county that was able to follow the tripartite strategy. Shootings by police have declined by 90 percent since CIT training was implemented in 2010, but the program accomplished something more: It shined a light on the high incidence among police of depression and suicide. According to Judge Steven Leifman, who established the Miami-Dade program, officers who go through the training “have been more willing to recognize their own stress [and] reach out to the program’s coordinator for mental-health advice and treatment for their own traumas.”

OTHER CITIES DEPLOY crisis teams that are solely mental health-based; police are not part of the first line at all. One of the nation’s longest-running examples of this is CAHOOTS (Crisis Assistance Helping Out On The Streets). It was created 31 years ago as part of an outreach program of the White Bird Clinic in Eugene, Oregon—once a countercultural medical clinic founded in 1970 as a refuge for hippies on LSD trips and other drug-taking youth. Calls for help are routed to staff 24/7 by the local 911 dispatcher. A medic and a mental health professional respond as a team to incidents such as altercations, overdoses, and welfare checks. They wear jeans and hoodies and arrive in a white van stocked with supplies like socks, soap, water, and gloves. Should a situation spin out of control, they call for CIT-trained police back-up, though last year only 150 out of 24,000 field calls required back-up. People who need further attention are taken to a crisis care facility operated by the mental health department—no trips to jail or to overflowing emergency rooms.

Mental health teams can bring some much-needed relief to municipal budgets. According to TAC, police officers across 355 law enforcement agencies spent slightly over one-fifth of their time responding to people with mental illness or transporting them to jail or psychiatric emergency rooms, at a cost of \$918 million in 2017. The CAHOOTS flagship program in Eugene operated on a \$2 million budget in 2019 and saved the locale about \$14 million in ambulance transport and emergency room care. Within the year, a number of cities (including San Francisco, Los Angeles, New York, and Durham, North Carolina) will be launching programs similar to CAHOOTS.

THE BEST CRISIS intervention programs help reduce the toll of police involvement gone awry, but the only way to take encounters out of the hands of police in all but the most dangerous instances is to repair the mental health system itself, which is a notoriously tattered network of therapists, psychiatrists, hospitals, residential settings, and support services, and work to prevent ill people from lapsing into crisis in the first place.

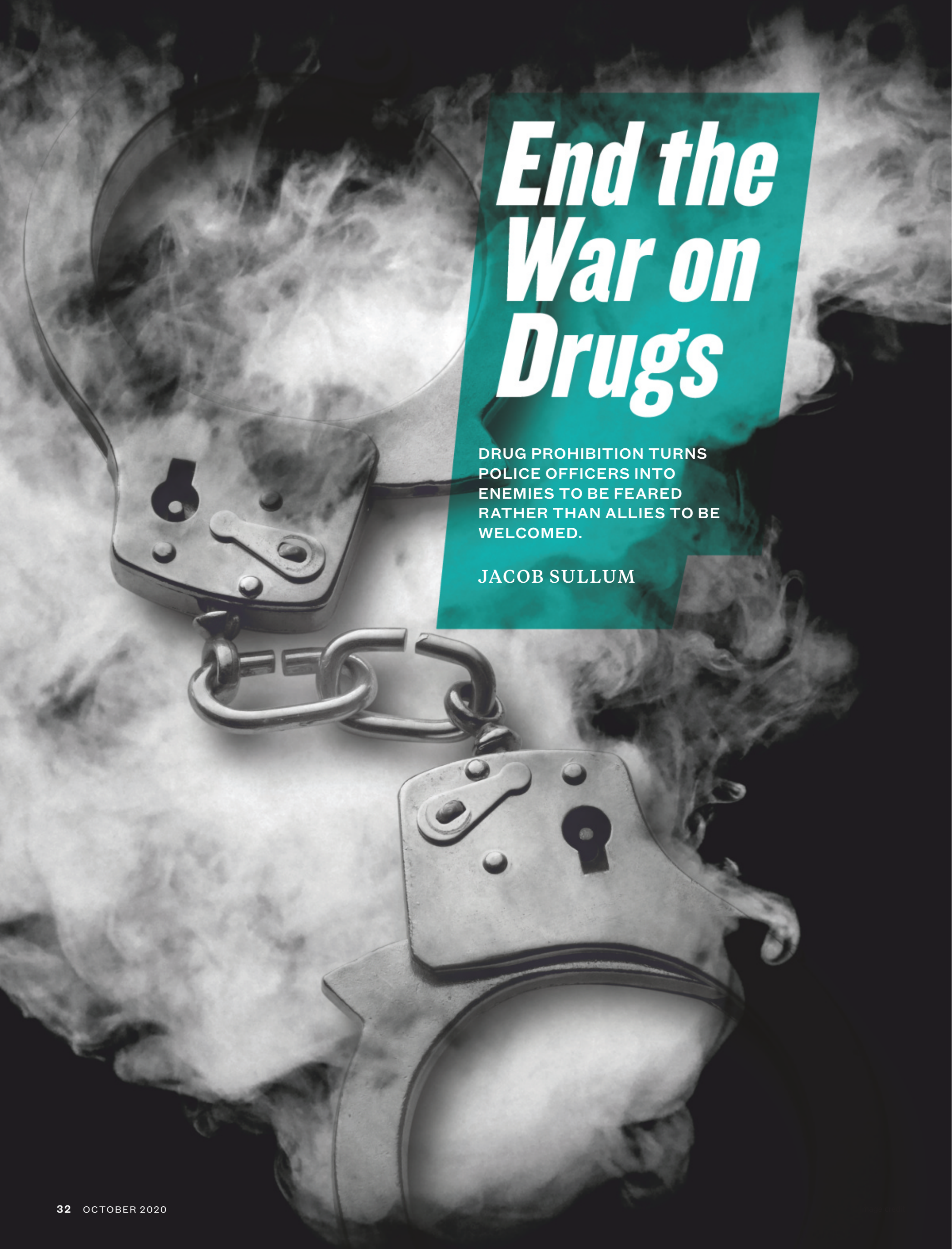


Between 25 and 50 percent of all people killed annually by police are in the midst of a mental health crisis when they’re slain, according to one report. Nationwide, a person with a psychotic illness is 16 times more likely to be killed during a police encounter than a person without such a condition.

For a glaring manifestation of the current failure, look to the criminal justice system. In 44 states, a jail or prison holds more mentally ill individuals than does the largest state psychiatric hospital. A person with a severe condition, such as schizophrenia or bipolar disorder, is 10 times more likely to be in a jail or prison than a hospital bed.

But once the crisis is underway, the people who show up at the scene must do the right thing. Balancing the proper role of police officers—as guardians vs. warriors—is now a subject of intense national debate. The mounting sense that America’s criminal justice system needs fixing should find its fullest expression in the duty to protect and serve those who are mentally ill or emotionally disturbed. 

SALLY SATEL is a resident scholar at the American Enterprise Institute and a visiting professor of psychiatry at the Columbia University Vagelos College of Physicians and Surgeons.



End the War on Drugs

DRUG PROHIBITION TURNS
POLICE OFFICERS INTO
ENEMIES TO BE FEARED
RATHER THAN ALLIES TO BE
WELCOMED.

JACOB SULLUM

“Critics of prohibition need to guard against the temptation to merely tinker with the drug laws.”

JACOB SULLUM
“THE FIXERS”

DECEMBER 1991

LOUISVILLE, KENTUCKY, POLICE officers did a lot of things wrong when they killed Breonna Taylor, an unarmed 26-year-old EMT and aspiring nurse, during a fruitless no-knock drug raid last spring. But the litany of errors that led to Taylor’s death would be incomplete if it did not include the biggest mistake of all: the belief that violence is an appropriate response to peaceful conduct that violates no one’s rights. If politicians did not uncritically accept that premise, which underlies a war on drugs that the government has been waging for more than a century, Taylor would still be alive.

The March 13 raid followed a sadly familiar pattern. Plainclothes police officers break into someone’s home in the middle of the night and respond with reckless, overwhelming force when the residents have the temerity to defend themselves. After such incidents, we usually say that confused, bleary-eyed people—in this case, Taylor’s boyfriend, Kenneth Walker—mistook the cops for criminals. But the reality is that the cops in situations like this *are* criminals, or would be but for the war on drugs.

Drug prohibition legalizes conduct that otherwise would be instantly recognized as felonious, including assault, theft, trespassing, burglary, kidnapping, and murder. It makes police officers enemies to be feared rather than allies to be welcomed.

The Louisville City Council responded to Taylor’s death by banning no-knock raids—a welcome step of questionable relevance, since the cops who raided her apartment, notwithstanding their no-knock warrant, banged on the door before breaking it in and claim they identified themselves (a point disputed by Walker and by Taylor’s neighbors). The police chief responded by initiating the termination of the officer who “displayed an extreme indifference to the value of human life” when he “wantonly and blindly fired 10 rounds” into Taylor’s apartment.

If judges did not routinely rubber-stamp search warrants, police investigating drug dealing might be less likely to invade the homes of people who are not actually drug dealers. And if cops were better trained in the appropriate use of deadly force, they might not fire wildly into an apartment building when the victims of such home invasions exercise their Second Amendment rights.

But reforms like these do not address the fundamental problem. When politicians insist on using force to prevent consumption of drugs they don’t like, bad things happen, starting with the violence that is required to enforce their pharmacological prejudices.

That problem goes far beyond the cases, such as Taylor’s, that are highlighted by Black Lives Matter. When a middle-aged white couple is killed in a drug raid instigated by a black narcotics officer who lied to obtain the search warrant (as happened in Houston last year) or a white 19-year-old is fatally shot by a white police officer during a marijuana sting (as happened in South Carolina several years ago), those outcomes are just as senseless and heartbreaking as the death of a young black woman gunned down by white drug warriors.

Drug prohibition also fosters violence by creating a black market in which there are no legal, peaceful ways to resolve disputes. A 1989 analysis of New York City murder cases, for example, found that, contrary to the impression left by politicians and journalists at the time, “crack-related” homicides were not committed by people under the influence of crack. The vast majority grew out of black-market conflict.

The black market that generates violence also generates artificially high profits, since traffickers can earn a risk premium by supplying contraband. According to a RAND Corp. estimate, Americans alone spend about \$150 billion a year on marijuana, heroin, cocaine, and methamphetamine. The worldwide value of illegal drugs may be three or four times as high.

Profits from that business strengthen murderous criminal organizations and foster corruption throughout the law enforcement system. In one recent case, a Drug Enforcement Administration agent had a drug trafficker buy a \$43,000 truck so he could seize it for his own use. In another case, a Customs and Border Protection agent was paid by drug traffickers for 10 years to facilitate smuggling. In yet another case, police officers in Philadelphia and Baltimore had a sideline in selling the drugs they seized. And then there’s the perennial problem of correctional officers who smuggle drugs into prisons.

As it did during national alcohol prohibition, that sort of corruption tends to undermine respect for the law. So does the sense that police are arbitrarily targeting a small percentage of lawbreakers for arrest and punishment, especially when enforcement has a racially disproportionate impact.

In New York City during the Giuliani and Bloomberg administrations, annual arrests for the lowest-level marijuana possession offense, which had averaged fewer than 2,500 under the two mayors who preceded Giuliani, skyrocketed after 1996, peaking at more than 50,000 in 2011. Blacks and Latinos, who together represented about half of the city’s population, accounted for 84 percent of the possession arrests that year.

On its face, the surge in pot busts was puzzling in light of the

fact that New York legislators supposedly decriminalized marijuana possession back in 1977. But possessing marijuana that is “burning or open to public view” remained a misdemeanor. Defense attorneys frequently complained that cops were manufacturing misdemeanors by patting down young men, ostensibly for weapons, and pulling out joints or bags of weed, which were then exposed to “public view.” Another technique was asking people to hand over whatever contraband they were holding, at which point they could be charged with a crime.

When you combine such trickery with the routine hassling of young black and Latino men that prevailed under the “stop, question, and frisk” program, it’s not surprising that police are widely viewed as the enemy in many neighborhoods they’re supposed to be protecting. And the disparities seen in New York are seen throughout the country: Nationwide, black people are nearly four times as likely to be arrested for marijuana possession as white people, even though they are only slightly more likely to be cannabis consumers.

The FBI recorded more than 660,000 marijuana arrests in 2018, more than nine out of 10 for simple possession. While people arrested for possessing small amounts of marijuana usually do not spend much time behind bars, they suffer long-lasting ancillary penalties that make it harder to obtain an education, earn a livelihood, and find housing.

Police in the United States reported a total of 1.7 million drug arrests in 2018. At any given time, nearly half a million people are incarcerated in U.S. jails or prisons for drug offenses. Drug offenders account for almost half of federal prisoners and 15 percent of state prisoners.

Arresting all of those people for actions that violated no one’s rights unjustly deprives them of their liberty and impairs their life prospects. It also hurts their families and communities. And it frequently entails draconian penalties, including sentences of years, decades, and even life, for nonviolent offenses. A man named Andy Cox, for instance, is serving a life sentence in federal prison for growing marijuana for recreational consumers, which is now a legal business in nine states.

Prohibition obviously makes drug use more dangerous by exposing people who violate it to the risk of violence and arrest. It also makes drug use more dangerous by creating a black market where quality and purity are unpredictable, which is not typically a problem with legal drugs.

As the government succeeded in driving down opioid prescriptions as part of the recent crackdown on pain pills, for example, the upward trend in opioid-related deaths not only continued but accelerated. That was not a coincidence, since the crackdown drove nonmedical users from legally produced, reliably dosed pharmaceuticals toward highly variable black-market substitutes.

The emergence of fentanyl as a heroin booster and substitute

has magnified the risks faced by illegal drug users. That phenomenon is also driven by prohibition, which pushes traffickers toward more-potent drugs because they are easier to smuggle. Just as alcohol prohibition drove a shift from beer and wine to distilled spirits, drug prohibition has driven a shift from opium to heroin, and now from heroin to fentanyl and fentanyl analogs, which are even more potent.

By raising drug prices, prohibition encourages injection, the most efficient route of administration. And by obstructing access to sanitary injection equipment, prohibition fosters soft-tissue infections and the spread of blood-borne diseases such as AIDS and hepatitis.

One thing that’s especially notable about these burdens is that the people who bear them are not, by and large, the people who benefit from them. Prohibition makes life worse—in many cases, a lot worse—for people who defy it. Those harms supposedly are justified by the goal of protecting people who are deterred by prohibition from bad choices they might otherwise make, a tradeoff that is morally dubious even if you accept paternalism as a legitimate rationale for government intervention.

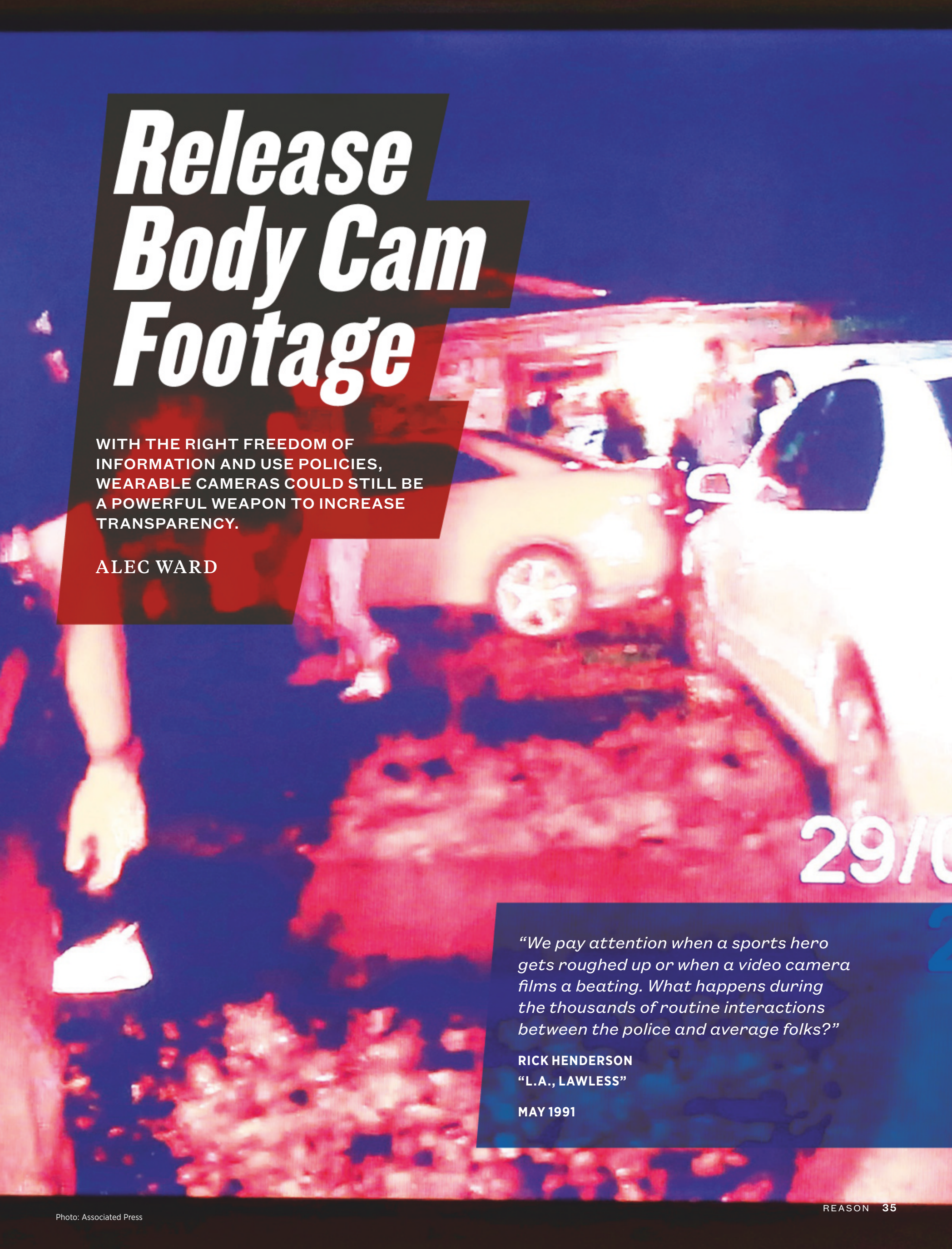
Which is not to say that the burdens of prohibition fall exclusively on people who like illegal drugs. Everyone else pays too, in the form of squandered taxpayer money, diverted law enforcement resources, theft driven by artificially high drug prices, and eroded civil liberties.

For decades the war on drugs has been the most important factor encouraging the Supreme Court to whittle away at the Fourth Amendment’s ban on unreasonable searches and seizures. Among other things, the Court has blessed pretextual traffic stops, warrantless rummaging through our trash, warrantless surveillance of private property by low-flying aircraft, mandatory drug testing of public school students, search warrants based on anonymous informants who may or may not exist, and searches triggered by a police dog’s alleged “signal.”

The war on drugs is also the main excuse for the system of legalized theft known as civil asset forfeiture, which allows police to take cash and other property they claim is connected to drug offenses.

We could avoid these disastrous consequences if the government respected the individual’s right to control his own body, including the substances that enter it. The government would still have a role, as it does with alcohol, in enforcing laws against fraud, protecting the public from reckless behavior such as impaired driving, and defending parents’ authority by imposing age restrictions on drug sales. But it would otherwise leave adults free to make their own choices. 

Senior Editor JACOB SULLUM is the author of *Saying Yes: In Defense of Drug Use* (Tarcher/Penguin).



Release Body Cam Footage

WITH THE RIGHT FREEDOM OF INFORMATION AND USE POLICIES, WEARABLE CAMERAS COULD STILL BE A POWERFUL WEAPON TO INCREASE TRANSPARENCY.

ALEC WARD

29/0

"We pay attention when a sports hero gets roughed up or when a video camera films a beating. What happens during the thousands of routine interactions between the police and average folks?"

RICK HENDERSON
"L.A., LAWLESS"

MAY 1991

THERE'S AN EMERGING consensus within the broad police reform movement in the United States that the proliferation of body-worn police cameras—the most significant legacy of the last round of protests against police violence—has been more or less a failed experiment. The complaints about violent, high-handed police conduct that sent protestors into the streets in 2015 had largely not been remedied by the end of 2019, although the number of officers wearing cameras skyrocketed during the same period.

Studies backed up what residents of overpoliced communities experienced anecdotally: Cops wearing expensive new cameras weren't any less violent, on the whole, than they had been before. The Axon camera clipped to Derek Chauvin's chest certainly didn't stop him from choking George Floyd to death in Minneapolis this summer.

So today, as the loudest voices are calling for a burn-it-all-and-start-over approach to criminal justice, it's tough to make the case that body cams are still a crucial part of the solution to police misconduct. But giving up on making cops record themselves would be a mistake for reform advocates.

Police reform measures can be grouped into two broad categories: those that aim to prevent misconduct on the front end and those that aim to ensure accountability when it does occur. Of course, there's some circularity there—we hope that more accountability will mean less misconduct to begin with. But writing off body cameras as a failed policy makes sense only if you assume their purpose is preventive.

It's understandable to think this way. After all, the huge expenditures required to implement body-cam programs were largely sold to taxpayers with the very promise that's been shown false—that knowing they were on camera would make officers behave better.

But the real value of cameras comes on the back end. Even if they don't stop misbehavior in the first place, cameras change the accountability playing field in important ways. The fact that those most likely to suffer from misconduct are often unreliable witnesses or unsympathetic victims—criminal suspects, homeless people, people with mental illnesses, and so on—has long stymied even good-faith efforts to hold police officers accountable for mistreating members of the public. When allegations come down to a credibility contest, judges, juries, police commanders, and others are often unwilling to credit the word of such victims over that of an officer who denies the wrongdoing.

Preserving the tech is important because legal changes alone can't solve this problem. Even ending qualified immunity—a kind of holy grail for police accountability advocates—won't help much if civil rights plaintiffs have no objective evidence to refute an officer's self-serving account of his actions.

Right now, the policy infrastructure around police cameras is largely built on the assumption that their main use is deterrence.

Since that model has failed, it's time to reimagine the cameras as tools to maximize transparency and accountability.

To do this, public access to footage should be radically expanded. Governments should insist, as a condition of continued funding for camera programs, that police release footage on demand to, at minimum, the people it depicts. At present, many states don't require police departments to release body camera footage in response to freedom of information requests, even when legitimate interests such as privacy and witness safety aren't implicated. (I learned this the hard way back in 2018 when, as a *Reason* intern, I took a suburban Virginia police department to court over its denial of my request for footage of an alleged excessive force incident—and lost.) Such restrictions serve no legitimate purpose when the people depicted in the footage have consented to its release, and they hamper both watchdog efforts and academic research.

The agencies that already exist to hold police officers accountable for their actions should also be more aggressive about preemptively reviewing body cam footage for misconduct. Internal affairs departments, civilian review boards, and prosecutors' offices should have unrestricted access to footage, and these entities should conduct regular audits for compliance with recording policies and other departmental rules, such as use-of-force regulations and requirements to behave courteously. Local governments could also require that departments conduct random audits of their own. Some departments already do this, but several—including problem departments like those in Ferguson, Missouri, and Mesa, Arizona—either don't bother or explicitly forbid the practice.

For any of this to work, departments must require officers to keep the cameras on and unobstructed any time they're interacting with a member of the public. They also need to get serious about enforcing those policies. Current penalties for violations are often weak or nonexistent. The handful of "reform" or "progressive" prosecutors who've been elected lately, in part on promises of greater police accountability, could help by systematically declining to prosecute people arrested by officers who were supposed to be recording but weren't.

Body cams make it possible for watchdogs and police leadership to address officer misconduct. But there's a more basic reason to keep pushing for more cameras and greater access to footage. True transparency and freedom of information mean we don't need a special reason to find out what the government is up to. The police work for all of us. We have every right to know what they're doing in our names. 📍

ALEC WARD is a law student at the University of Virginia and a former *Reason* intern.



Stop Overpolicing

EXCESSIVE TRAFFIC AND PEDESTRIAN
STOPS, ESPECIALLY IN BLACK
COMMUNITIES, ARE DANGEROUS AND
COUNTERPRODUCTIVE.

JONATHAN BLANKS

“The practice of racial profiling grows from a trio of very tangible sources.... The sources include the difficulty in policing victimless crimes in general and the resulting need for intrusive police techniques; the greater relevancy of this difficulty given the intensification of the drug war since the 1980s; and the additional incentive that asset forfeiture laws give police forces to seize money and property from suspects.”

GENE CALLAHAN AND WILLIAM ANDERSON
“THE ROOTS OF RACIAL PROFILING”

AUGUST/SEPTEMBER 2001

ON JULY 6, 2016, Philando Castile was fatally shot during a traffic stop in suburban Minnesota when a police officer freaked out over Castile's legally carried concealed firearm. While activists and the general public reasonably focus on the senseless tragedy that day, that stop was at least the 46th time Castile had been pulled over in the previous 13 years. There is little reason to believe Castile was a particularly bad or dangerous driver. He was cited once for exceeding the posted speed limit and once for running a stop sign; three other stops were for more ambiguous moving violations, according to an NPR investigation published after his death. It seems, instead, that the local police used the myriad regulations at their disposal to repeatedly stop, investigate, fine, and sometimes arrest Castile for minor offenses. It is no exaggeration to say that Castile had been victimized by police many times before he was killed.

Police officers make millions of traffic and pedestrian stops in the United States every year. A very small number result in any police use of force, let alone lethal force. But officers understand that any on-duty interaction may become violent and are instructed to be prepared for that possibility at all times. To drive that message home during training, cadets watch graphic dashboard camera videos of traffic stops that result in shootouts and officer deaths. Thus, any involuntary contact between citizens and police officers carries an inherent danger for individuals on both sides of the encounter. Despite this risk, police departments incentivize their officers to make stops not only for traffic safety and crime deterrence but also for revenue generation and as a means of conducting investigations that would otherwise lack legal justification.

UNDOUBTEDLY, LAWMAKERS HAVE put too many crimes and civil violations on the books that can lead to police-initiated contact, a phenomenon broadly captured by the term *overcriminalization*. Most states and localities could purge many laws and regulations without any damage to public safety or security. But every day, police officers routinely use personal and institutional discretion to ignore countless violations that range from jaywalking to not using a turn signal to public consumption of drugs and alcohol. Thus, the determination of how often and under what circumstances to make traffic or pedestrian stops is ultimately one of policy, not one of law.

Although departments are prohibited from setting ticket or stop quotas for personnel, commanding officers set expectations for what a successful shift looks like on a typical day. For example, an officer assigned to general patrol, in which his role is to respond to 911 calls in his assigned zone, may not be expected to initiate many stops, particularly on shifts with a lot of calls. But if that officer is assigned to traffic duty on a road segment known for speeders and he reports only two vehicle

stops and no tickets issued during an eight- or 10-hour shift, he will likely be questioned by his superior.

Beyond the individual incentives that an officer faces on any given day, police departments also can set an enforcement strategy in response to local conditions or political agendas. If a city or policing district sees a spike in gun violence, for example, political pressure will come down on the police brass to do something about it, which invariably trickles down to front-line officers. There are only so many police officers in a given department, and they can't be everywhere at once, so the institution's ability to reduce crime right away is naturally limited. But officers have a considerable amount of power at their disposal to produce numbers that show that they are "doing something" in response to a perceived crisis.

Aggressive policing techniques allow officers to confront individuals, question them, and perhaps search them for contraband such as drugs and guns. New York City's stop-and-frisk program is the most notorious example of this style of policing. This program demonstrated to politicians that NYPD officers were in the streets discouraging crime with proactive tactics. Over the most active 10 years of the program, the New York Police Department (NYPD) recovered roughly 8,000 firearms by stopping, questioning, and frisking pedestrians. As in much of the rest of the country, violent crime in New York was trending downward during this period, so on its face, it may have seemed like an excellent anti-violence tactic.

What the NYPD didn't highlight was that recovering those 8,000 guns required stopping roughly 4 million individuals, the vast majority of whom were black or Latino men—a firearm hit rate of 0.2 percent. Of course, officers also sometimes found drugs or people who had outstanding summonses for both petty and serious offenses. But even taking those cases into account, roughly 90 percent of the people the NYPD subjected to a stop and frisk were completely innocent of wrongdoing in the eyes of the law, according to the New York Civil Liberties Union.

Although New York's program has been pared back as the result of a lawsuit and public pressure, the aggressive use of pedestrian and traffic stops to investigate crime in the general public remains commonplace for police departments around the country. Stops are a common tactic police use to respond to spates of violence and gun victimization. Sometimes the stops seem to lower crime, and sometimes they do not. But even when such programs seem to correlate with crime declines while they are operating, it bears noting that New York did not see a spike in crime after stop and frisk was scaled down there.

In 2015, the Los Angeles Police Department created its Metropolitan Division, which uses unmarked police vehicles to increase motor vehicle stops to search for drugs and guns in high-crime areas. According to the *Los Angeles Times*, nearly half of the motorists pulled over by Metro Division units are

black, despite black people making up roughly 9 percent of the L.A. population. The *Times* dubbed this disparity “Stop-and-Frisk in a car.” Violent crime in those areas continued to increase until 2018.

In 2017, following an uptick in violent crime, the police department in Little Rock, Arkansas, assigned officers to special overtime patrols in marked cars with the express purpose of stopping vehicles to search for firearms. During a six-month period, the *Arkansas Times* reported, the Little Rock Police Department (LRPD) recovered 50 unspecified “weapons” as part of that initiative. But the LRPD needed over 6,000 vehicle stops to recover those weapons, pulling over 112 innocent motorists for every weapon recovered. When black community members complained about the special patrols, including reports that officers would sometimes draw their guns without provocation, the LRPD responded that the effort was part of a “community policing” strategy. Such tactics differ considerably from the ice cream socials and get-to-know-a-cop events that typify other cities’ community policing efforts.

Defenders of aggressive policing strategies like those deployed in Little Rock will point to a measurable decrease in violent crime once the special overtime patrols were initiated. While this decrease is almost certainly tied to the actions of LRPD, the explanation is not as straightforward as it may seem.

MODERN PROFESSIONALIZED POLICING has mostly been a reactive endeavor in the United States. Local governments tend to throw police officers at public problems—ranging from crime and disorder to mental health and other personal crises—and the cops, in turn, develop ad hoc strategies based on experience, hunches, and the “do something” incentives described above.

In the last couple of decades, a group of academics, including some current and former police officers, have developed a discipline known as “evidence-based policing.” They have designed research and field experiments to measure the effectiveness of police policy and strategies. By using legitimate scientific methods like random control trials, these researchers are creating a growing body of literature on how police can make society safer.

Getting police officers and departments to embrace this new way of thinking about their jobs continues to be an uphill struggle. One consistent finding is that Drug Awareness and Resistance Education (DARE) programs have no significant impact on teen drug use. Nevertheless, when I attended a conference put on by the Center for Evidence-Based Crime Policy (CEBCP) at George Mason University a few years back, one police officer in attendance was unironically wearing his department’s DARE polo shirt. Although the program isn’t as ubiquitous as it once was, the DARE America website boasts that its officers reach more than a million students every year, and its most recent annual report shows a 23 percent increase in revenue

from 2017 to 2018.

The CEBCP maintains an online Evidence-Based Policing Matrix that collects and categorizes scientific research on police practices. The matrix characterizes studies by their methodological rigor and breaks them into categories such as “neighborhood,” “micro-place,” or “jurisdiction” to describe the size of the experiment. While DARE is an exceptionally useless police strategy, most policing practices aren’t as clearly effective or ineffective. But trends are emerging as the database continues to grow.

One finding that is now widely accepted in the evidence-based community is that a visible police presence can decrease criminal activity in areas experiencing elevated crime. While no evidence-based studies concerning Little Rock’s overtime patrol shifts or the L.A. Metro Division’s methods have been published, this observation seems to match up with their respective experiences. Los Angeles didn’t see a reduction in crime when it used unmarked vehicles to make its stops, but Little Rock, with its marked patrol cars, did.

Beyond increasing police visibility, though, the investigatory stops and searches may not have played any role in driving down violence. While some evidence-based studies suggest stop and frisk may reduce crime when carefully targeted in “hot spots,” the dramatic rollback of stop and frisk in New York indicates that widespread targeting of black and Latino men is not an effective crime control strategy.

For decades, aggressive police tactics have overwhelmingly targeted black men. Far more often than not, the individuals stopped have done nothing wrong. When they can, police point to guns taken off the street or crime rates that go down. But they too often do not seriously consider the social costs of stopping and harassing innocent people who perceive—often correctly—that their involuntary police encounter is in large part due to their race. Most innocent drivers aren’t shot and killed by an officer, as Castile was, but enough of the people who are stopped fear that could happen to them, and they rightfully resent it.

Data show that police don’t need to stop as many people as they do. Police departments should deploy their officers in a way that maximizes safety for everyone in the community instead of boosting officer activity for its own sake. Harassing people is a policy choice, and a poor one: There’s little evidence it works to reduce crime. But even if it did, in a free society, effectiveness must sometimes take a backseat to constitutional and civil liberties concerns. In this time of heightened sensitivity to police treatment of African Americans, reducing unnecessary police contact is an easy way for departments to demonstrate that black lives matter. 📌

JONATHAN BLANKS is a visiting fellow in criminal justice at the Foundation for Research on Equal Opportunity.

Restrict Asset Forfeiture

IT'S TIME TO DO SOMETHING ABOUT
POLICE SEIZURES OF PROPERTY FROM
INNOCENT PEOPLE.

ZURI DAVIS

"Through their impact on property rights, the drug forfeiture laws have already eroded fundamental freedoms. The fact that this has occurred so easily, with barely a whimper of protest from the courts and virtually no opposition from thoughtful commentators, gives real credence to [Milton] Friedman's warnings about where the war on drugs may take us."

STEFAN B. HERPEL

"UNITED STATES V. ONE ASSORTMENT OF 89 FIREARMS"

MAY 1990

ELIZABETH YOUNG'S SON was arrested in 2010 after selling \$90 of marijuana on the front porch of her Pennsylvania home. At the time, her son was unaware that his buyer was actually a police informant. A month after the arrest, prosecutors filed a petition to seize Young's home and vehicle. The 75-year-old West Philadelphia grandmother hadn't committed the offense, nor was she ever charged with a crime. Yet the state's civil asset forfeiture rules gave prosecutors free rein to take her property.

Like many other abuses justified by the drug war, civil asset forfeiture has expanded government power over time. It has bestowed upon police an all-but-limitless authority to steal private property without cause or accountability, eroding Americans' "fundamental freedoms...with barely a whimper of protest from the courts," as Detroit attorney Stefan B. Herpel put it in *Reason* 30 years ago.

As Herpel observed then, civil asset forfeiture can be traced to a medieval belief that objects can cause death and other harm of their own accord. Today's civil asset forfeiture proceedings are *in rem* ("against a thing"), explains the Institute for Justice, a public interest law firm that has litigated a number of asset forfeiture cases and filed an amicus brief in support of Young. Just as superstitious beliefs in the Middle Ages allowed kings to seize supposedly evil property that was found to have caused someone's death, the drug war has allowed law enforcement to seize houses, cars, life savings, and other private property. These assets pad the budgets of police departments and prosecutors' offices, though law enforcement insists the purpose of seizures is to disrupt organized criminal activity. This centuries-old understanding of forfeiture is reflected in the titles of civil asset forfeiture cases. Young's case, for example, was filed under *Commonwealth of Pennsylvania v. 1997 Chevrolet and Contents Seized From James Young*.

CIVIL ASSET FORFEITURE does not usually require evidence, a conviction, or even probable cause to believe the owner has committed a crime. It relies merely on the suspicion that an object is connected to criminal activity. Which is, in many modern cases, the sale of drugs.

Herpel's 1990 commentary about the courts' complicity still applies. Should an owner wish to recover his assets, he must do so in a trial *after* the warrantless seizure has taken place, during which the government officially has the burden of proving a criminal nexus. But as Herpel noted in 1990, as Young discovered in the 2010s, and as many Americans still experience, asset forfeiture effectively shifts the burden of proof from the government to the person whose property stands accused. That practical reality contradicts the foundational principle that a person is innocent—and thus shall not be punished—until proven guilty.

In 2015, the Institute for Justice found that the Justice and Treasury departments took in \$29 billion in forfeiture funds from 2001 to 2014. And in the 14 states where forfeiture data were available, forfeiture revenues more than doubled from 2002 to 2013.

Civil forfeiture was used more frequently than criminal forfeiture, which requires a conviction. From 1997 to 2013, civil seizures accounted for 87 percent of the Justice Department's forfeitures. In addition, 88 percent of the department's forfeitures were administrative, meaning the objects were assumed guilty by default when a property owner did not challenge the seizure in court. One barrier to challenging a seizure, of course, is the inability to afford a lawyer, a problem exacerbated when a person has already been stripped of her property.

When Young's case reached the Pennsylvania Supreme Court in 2017, the justices ruled that forfeited property must be "significantly utilized" in the commission of a crime and that the proportionality of a forfeiture depends on the owner's culpability. Publicity regarding forfeiture abuse also has led to statutory reforms. Since 2014, 35 states have enacted reforms such as demanding forfeiture data, diverting proceeds from law enforcement agencies, raising standards of proof, and requiring a criminal conviction.

A federal civil asset forfeiture reform bill was reintroduced by Sen. Rand Paul (R-Ky.) in June, adding to the list of reforms inspired by the George Floyd protests. Paul's Fifth Amendment Integrity Restoration Act would eliminate the Justice Department's Equitable Sharing Program, which creates a loophole allowing local agencies to subvert tough state restrictions on forfeiture by sharing seized assets with the federal government. The bill also requires the government to present "clear and convincing" evidence that seized property was used in connection with a crime and to provide counsel for property owners.

Reform is possible, but it can be hampered by law enforcement's unwillingness to let go of a reliable cash cow. New Mexico, whose forfeiture laws are considered to be the best in the country, requires a conviction prior to seizure and directs seized property to the state's general fund. Albuquerque tried to ignore those rules, then tried to moot a lawsuit against its forfeiture program by returning a vehicle it had seized, but a federal judge allowed the case to proceed. The program was deemed unconstitutional, and the city finally ended it in 2018, three years after the state legislature passed its gold-standard reform.

Removing these incentives to engage in policing for profit would begin to restore some long-eroded freedoms. 📌

ZURI DAVIS is an assistant editor at *Reason*.



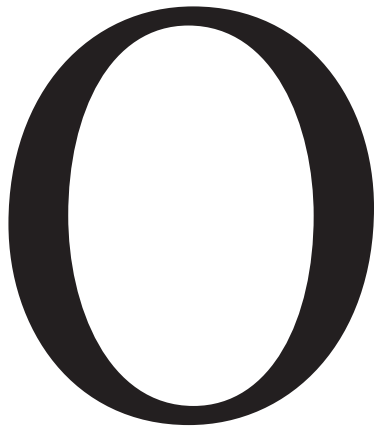
‘I Am More Optimistic Than I’ve Been in a Long Time’

The Washington Post’s Radley Balko was a pioneer in reporting on the disastrous consequences of police militarization and the need for criminal justice reform. Now everyone else is catching up.

interview by

NICK GILLESPIE

photos by Matthew Simmons



ON MAY 25, George Floyd, an unarmed black man, died at the hands of Minneapolis police. Six years ago, after cops killed Michael Brown in Ferguson, Missouri, just 43 percent of Americans believed that such incidents indicate a systemic problem. Though police kill-

ings have remained level since 2014, 69 percent of Americans now agree that “the killing of Floyd represents a broader problem within law enforcement.”

Radley Balko is a *Washington Post* opinion columnist and former *Reason* reporter who covers police abuse, the drug war, and criminal justice reform. His *Reason* coverage of Cory Maye—a black man who was put on Mississippi’s death row for supposedly killing a police officer during a no-knock raid in 2001—helped bring about Maye’s acquittal. His 2013 book *Rise of the Warrior Cop* (PublicAffairs) was ahead of its time in documenting the dramatic increase in the militarization of local law enforcement and the dangerous incentives and confrontations that creates between police and citizens.

His latest book—*The Cadaver King and the Country Dentist* (PublicAffairs), co-authored with Tucker Carrington—documents widespread problems with law enforcement, forensic evidence, expert testimony, and media coverage of crime. In June, Nick Gillespie spoke with Balko about how to dial back the militarized police tactics that have become commonplace and whether lasting reform might be possible.

***Reason:* You’ve been covering the intersecting topics of the war on drugs, police abuse, and race issues in America for going on 20 years now. Why did the George Floyd killing explode into public consciousness the way it did?**

I think [it’s] the power of video. If you go back to the civil rights movement, obviously there were abuses going on for a long time in our country’s history. The organizers of the civil rights movement in the 1960s really recognized the power of images. They knew there was going to be violence; they knew that the other side was going to be provoked and that was a strategy to win over the middle and white America.

The George Floyd video is indisputable. There have been attacks on Floyd’s character, his decisions in life. But there is no excuse for having your knee on a guy’s neck for nine minutes.

In the trials of the Los Angeles Police Department (LAPD) cops accused of beating Rodney King, the defense broke the video down, claiming it showed that actually they

weren’t beating him, and some people thought “Oh, maybe what LAPD was doing was OK.” With Floyd, nobody is defending the police action. Is that a sign of progress?

I think it is. There’s been a widespread embrace of the idea that police are systematically abusive. The idea of racism in policing in America has crept into white America, into the suburbs. Four years ago, the Democratic nominee for president couldn’t say the phrase *black lives matter* without qualifying it. A lot of people were like that. Now you have [GOP Sen.] Mitt Romney saying it unsolicited. You have people [who] probably haven’t protested ever in their lives joining this protest.

Like Michael Brown in Ferguson, like Tamir Rice, a lot of these incidents that have sparked uprisings, none of them are really about those cases in isolation. There have been unjustified police killings of white and black people in cities all over the country over the last 20 years; where we see the uprisings tend to be in places that those stories speak to people on a very personal level. They tap into some long-simmering tension, resentment, pain, fear, despair.

I think with Michael Brown—and, as you say, Rodney King—the fact that the initial narrative had some qualifications or context that made it less compelling gave white people an excuse to dismiss it all as based on a false narrative, and actually ignore the broader long-simmering anger and despair that led to protests in the first place. In this case, there’s no contextualizing that video. So it’s easier to say, “All right, I’m fully on board with this.”

Critics of Black Lives Matter say police abuse is an issue with individual cops, not systemic racism. They’ll note in 1971, officers with the New York Police Department killed 93 people. In 2016, they killed nine. They’ll say that this is bad, but it is not a big-scale problem.

I think there are two different questions: How systemic is police abuse? And how systemic is racism?

There are lots of things that drive how many times police shoot people over the course of a year, including general crime rates, consensus about how people’s lives are, police attitudes, how many police officers are on the force, how well-equipped they are, how well-trained they are. There was a lot more violence, period, in the ’70s and ’80s, up to the early ’90s. My measure of whether a system is corrupt is whether you can point to specific incidents where a bad apple...has clearly acted corruptly and violated some of these constitutional rights and nothing is done about it.

You can say that bad cops are a tiny percentage of the overall force, but if the system isn’t doing anything about those bad cops—or even when it does, they can find a job a county or two over—then it’s probably a corrupt system. Yes, it’s

“If you have a system where even the obviously corrupt people are very rarely held accountable, then I think you can say unequivocally that that system itself is corrupt.”

probably a small percentage of cops who kill people or shoot people or are blatantly racist. But there is an entire culture of covering up, of the idea that cops should always look out for each other—the best interests of cops are prioritized over everything, over justice, over the people they’re supposed to be serving.

If you have a system where even the obviously corrupt people are very rarely held accountable, then I think you can say unequivocally that that system itself is corrupt.

Can you talk about systemic racism? How does it influence policing?

There are a lot of misconceptions about what systemic racism is. For a long time I didn’t fully understand what it was. Systemic racism is not the idea that everybody is racist on an individual level. It’s that the system itself was constructed, built, honed, at a time when racism was written into our laws. It was a day-to-day fact of life. The criminal justice systems that we built during Reconstruction, which hasn’t really subsequently changed since the end of Jim Crow...I don’t think it should be particularly controversial to think that those systems that had a purpose at that time probably haven’t shed all of the aspects of deliberately wanting racially based outcomes. They’re not just going to shed that stuff overnight—it has to be purged from them.

After Ferguson, I went to St. Louis County in Missouri, [which] has over 90 municipalities—an obscene number of cities and towns. During the great white flight to the suburbs from St. Louis, white people would move into a suburb and eventually upper-class/middle-class black people would also

move out [to the suburb]. White people didn’t like that, so they’d move a mile over and start a new town. This just kept happening all over St. Louis County, and you got postage stamp towns all over the county. Almost all of them have a town council and a police department.

The towns are basically funded [by] a sales tax. If you’re a poor town, which tends to be the blacker towns, you’re going to get much less revenue from sales taxes, and so they supplement that [with]—or in some cases, their primary sources of revenue are—fines and fees that they extract from their residents. The really pernicious part of this is that the blacker the town, the poorer the town; the blacker the town, the more reliant they are on these fines and fees.

In all these towns, the police don’t actually solve crimes. The county police do that. Their sole purpose is to extract revenue from their residents in order to pay their own salaries.

Nobody’s going to argue that black cops that are harassing people in [primarily] black towns are racist. You also can’t argue that that isn’t a racist system built on a racist legacy.

I also think that the whole idea of racism—systemic racism, racial profiling, racism in the criminal justice system—the counter of that is always that you have to look at black crime rates, black-on-black crime.

Over Memorial Day weekend in Chicago, 18 people were killed on May 31—almost all of them victims of black-on-black crime. But we don’t hear about that. Some people say that’s evidence the conversation is focused in the wrong place.

That’s the argument. You look at, for example, stop and frisk

“There’s an inherent power imbalance when you’re pulled over, and this guy has got six different weapons on his belt, and he’s hovering over you while you’re sitting in your car looking up.”

in New York City, which is often justified [by saying], “Look at all the black lives stop and frisk saved because it took guns out of the hands of criminals,” right? Something like 95 percent of the people who were stopped and frisked, police didn’t find anything. If that’s the argument, what you’re saying is those 95 percent of people who were stopped and frisked who are innocent—that’s fine. That’s the opposite of individualism, right? We’re treating people based on the actions of other people who look like them.

If the argument is that black people commit more crimes, therefore more black people are in prison, that’s at least something we can look at the data on. But the idea that racial profiling and stopping and searching innocent people on the side of the road is OK because those people are a member of a group that tends to, I don’t know, be more likely to engage in drug trafficking—you’re justifying punishing people based on the fact that they’re a member of a racial group.

You have written about the Breonna Taylor case, which is a horrifying encapsulation of the way the drug war culminates in terrorizing innocent citizens, through no-knock raids that turn deadly, police militarization, and the like. Do you think that case is driving enough of the conversation for police reform?

I’d like to see it driving more, because I think the use of those tactics is far too common. It used to be that this kind of tactic was only used if you were confronting somebody who was in the process of committing a violent crime, where somebody’s life was in immediate risk. What we see in the ’80s and ’90s is forced-entry raids increasingly—and then dominantly—used

to serve drug warrants.

It was a really dramatic shift in the use of that kind of violence, government violence. Before you were using it against somebody who was in the process of committing a violent crime, an active shooter or bank robber or hostage situation. Now, that kind of force is primarily being used against people who are merely suspected of committing nonviolent, consensual crimes.

Most of these raids are not arrest warrants, they’re search warrants. They’re still in the investigative process. A lot of times it’s based on dirty information. The tactics themselves are extremely volatile and violent. They leave very little margin for error. As we see with Taylor, people have died because of it.

A year and a half ago, I looked through about 100 no-knock search warrants that were served in Little Rock, Arkansas. About 95 percent of them were illegal, in direct defiance of a Supreme Court ruling, *Richards v. Wisconsin*. What the court held was that in order to get a no-knock warrant, the police have to show specific information that the person they’re going to search is a threat to either attack the police, dispose of evidence, or flee if the cops take the time to knock and announce first.

Every single warrant [I looked at] had this boilerplate language, almost word for word in most of them, that said that all drug dealers are a threat to attack police, dispose of evidence, or flee if the police knock and announce. The Supreme Court has explicitly said that that’s illegal. The remarkable thing is the judges [who] were signing off on these warrants were completely oblivious to the fact that they were signing

illegal warrants.

In Little Rock, they were using explosives to blow doors off the hinges. If somebody's on the other side of that door, they're lucky to be alive.

Is it that they don't read the warrants, or they do and they just ignore the Supreme Court ruling?

A few years later in *Hudson v. Michigan*, the Court ruled that yes, the knock-and-announce rule is inherent in the Fourth Amendment—it's part of a "castle doctrine," which is a centuries-old law that goes back into common law—but we're not going to apply the exclusionary rule when the police violate it. Basically, there was no mechanism to actually enforce this requirement. A lot of us predicted this was going to be terrible, because there's nothing stopping police from violating [it]. It's not a rule at all if there's no way to enforce it.

That's what we saw in Little Rock. And in the Taylor case, there were five warrants for that particular drug investigation where the detective requested a no-knock. It was the word-for-word exact same language about drug dealers being violent or a threat to dispose of evidence. In Taylor's case it was particularly pernicious, because her involvement was that she had dated the guy who [had been] under investigation several years earlier—they had broken up years ago—but she had let him use her address to receive some packages in the mail.

Now, if they had actually followed the Supreme Court's guidance, the judge would have required [more investigation] before granting a no-knock [warrant]. They, and the judge, would have learned that her connection to all this was tenuous and that this kind of violence wasn't necessary against her.

The packages that the ex-boyfriend received at her house were clothing and shoes. There weren't even any drugs in the packages. Her only crime was to let a former paramour use her address to receive some clothing in the mail. For that, they kicked down her door in the middle of the night. Her then-boyfriend reached for a gun, which he legally owned. If they'd done some research, they would have known that he stayed there and that he was a licensed gun owner, and they would probably have drawn the conclusion that drug dealers tend not to license their weapons with the government.

Are there theories of policing that are gaining ground that are more consistent with the idea of people being able to pursue life, liberty, and the pursuit of happiness?

One reform libertarians should be paying a lot of attention to is from a group called Cure Violence that operates in several large cities, but primarily in Chicago. This is an intervention group, so they operate in high-crime areas, and when there's an incident—a homicide or some sort of gang activity, for

example—they go in. They have authority, respect, and credibility in the communities where they operate. A lot of times they hire people who used to be in those communities. They'll hire former gang members.

The idea is that they go in and intervene. They try to prevent the violence from spreading, and they try to prevent it before it happens. There's pretty compelling data in Chicago showing that in the neighborhoods where they operated, they had a very substantial effect on reducing the homicide rate. In fact, when the homicide rate spiked in Chicago several years ago, it coincided with the city cutting the funding to Cure Violence. If you look at neighborhood-specific data, it's pretty overwhelming that this group was doing a very good job.

Would that work as a replacement for police? I don't know. Probably not, but the idea that maybe we could redirect a not-insubstantial amount of money that we give to armed officers of the government patrolling these neighborhoods to unarmed people who try to resolve things not with coercion but with negotiation, talking, and mediation is something worth looking at.

Policing has been with us for so long that it's hard to even imagine a country without any sort of armed police at all. But I do think we can think creatively about these things.

Any other reforms that you think are particularly worth focusing on?

One that [the George Mason University economist] Alex Tabarrok wrote about [recently] is that there's no reason why our traffic laws have to be enforced by armed government agents.

A police officer pulls you over and gives you a ticket, which then you take home and decide whether you're going to pay, and you send it in via mail. Why can't you have some sort of civilian traffic corps who, instead of pulling you over, sees you speeding, writes down your license plate, calls it in, and you get a ticket in the mail? The end result is still the same. You get a ticket in the mail that you can pay, or choose not to pay and face the consequences of that. The difference is you're not having this armed interaction [or] confrontation with a police officer, which is completely unnecessary.

Our traffic laws need to be about road safety, not generating revenue. There are lots of studies done in Europe about [using] roundabouts instead of stop signs. There have been some really interesting studies about speed limits and how arbitrary they are. Our roads are actually built imagining people driving much faster than speed limits allow, which means cities and towns can place speed limits arbitrarily in a way that maximizes revenue to the city....I mean, there are small towns that 40 or 50 percent of their budgets are reliant on traffic revenue.

“Policing has been with us for so long that it’s hard to even imagine a country without any sort of armed police at all. But I do think we can think creatively about these things.”

That idea of driving through small towns and getting a ticket is so deeply embedded in our culture, it’s almost impossible to think about a world where you wouldn’t be worried about that.

Right. Nobody’s saying there should be anarchy on the highways, but we could have speed limits that are more organic, calculated based on how people actually drive. There’s a study showing the safest speed limit is the one that’s what the 90th percentile of people drive at. Right now [the real speed limits are] far lower than that. That just creates unnecessary interactions.

Think about all the police abuse cases that originated with a traffic stop, and then escalate it from there. Think about all the animus and anger in motorized communities that come from the regular harassment they face from traffic stops. You take those out of the picture and it could go a long way toward rehabilitating the image of the police.

Part of the large issue of reform is really minimizing contacts between the police and citizens.

There’s an inherent power imbalance when you’re pulled over, and this guy has got six different weapons on his belt, and he’s hovering over you while you’re sitting in your car looking up at him. If you’re part of the community where this happens to you however many times a month—five, six, seven, 10 in some areas—it’s easy for somebody who looks like me to say, “You should be respectful to cops and polite to them.” If they’re harassing you and screwing with you several times a month, eventually you’re going to lose your patience. I think we expect

people to be perfect in those situations. There are polls showing that black people are more fearful of being a victim of a police beating or shooting than they are of being victimized by a criminal.

Are you optimistic about police reform? How will we know when we get there?

I am more optimistic than I’ve been in a long time. If you look at polling, it’s remarkable—support for the protesters jumped 20 points in two weeks.

So much policing is done at the local and state level that there isn’t a federal switch we can just flip to say, “OK cops, you can’t do this anymore.”

The best thing we can do at the federal level is to remove the perverse incentives that are driving bad behavior at the local level. Most of the reform is going to happen at the local level.

In the aftermath of the Floyd killing, the Minneapolis City Council is effectively abolishing the police department as it exists now and replacing it with a different set of operations.

Right, and it’s not clear what it’s going to look like, but I think it is a good thing. We want to see cities trying different ways of walking that line between public safety and individual rights. The more they try different formulas, the more likely we are to find one that’s going to hit on the right equation. 

This interview has been condensed and edited for style and clarity. For an audio version, subscribe to *The Reason Interview With Nick Gillespie*.



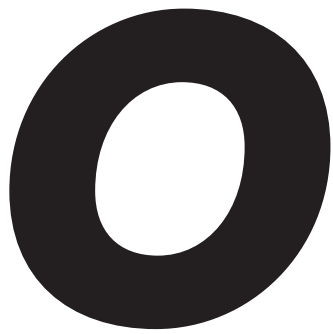
A full-page photograph of a woman running on a city street. She is wearing a black t-shirt, blue jeans, a blue surgical mask, and glasses. Her hair is blowing in the wind. In the background, other people are running, and there are palm trees and buildings. The title text is overlaid on the left side of the image.

WHY HONG KONG'S PROTESTS TURNED VIOLENT

THE ESCALATION IS PART OF A
STRATEGY TO UNMASK CHINA'S
ABUSES BEFORE THE WORLD.

ROB YORK





ON THE FIRST Saturday of October 2019, people across the Hong Kong Special Administrative Region (SAR) woke to something they're not accustomed to: nonfunctioning public transportation. As on many weekends since last June, there had been demonstra-

tions the previous night against the Hong Kong government and the influence exerted on it by the People's Republic of China (PRC). However, with the SAR government having just announced its intent to ban face masks—which protesters had been using to conceal their identities and prevent reprisals—the anti-government forces escalated.

The Mass Transit Railway (MTR)—the SAR's renowned subway system—had been ransacked. Grocery stores and shopping centers had closed preemptively to prevent vandalism. Across the walls of the station near where I lived, one could find messages spray-painted by protesters. I took pictures, noting the sentiments: "History will absolve us"; "No turn back for HK"; "no freedom I would rather die"; and—most ominously—"If we burn You burn with us."

Last year's protests began as a response to the Hong Kong government's proposed amendment to the territory's extradition law, which would have allowed certain criminal suspects to be sent to mainland China for trial. This roused Hongkongers, accustomed to their highly regarded and politically independent judicial system, and fearing the prospect of rendition to the mainland's much less regarded (and much less independent) system. This, they said, would be the death knell for "one country, two systems," which allows Hong Kong to retain a number of rights, such as free speech, a free press, and a fair trial, that are largely absent on the mainland.

The protests started peacefully enough. On the weekends leading up to June 12, when a vote on the bill was scheduled, crowds sometimes exceeding 1 million participants turned out to march. But when the loyalist Hong Kong government dismissed these demonstrations and went ahead with plans to vote on the amendment, the protesters broadened both their objectives and their tactics. On June 12, a group of protesters, estimated at 40,000 strong, blocked entry into the Hong Kong Legislative Council. When they charged police barricades, the police responded with tear gas, pepper spray, and rubber bullets. Arrests were made, and dozens had to be treated at local hospitals.

The Hong Kong government got the message, suspending the bill and vowing not to resurrect it. But it was too late: The protesters wanted Chief Executive Carrie Lam out of office, along with universal suffrage, amnesty for arrested protesters, and the formal withdrawal of the bill. They also demanded a comprehensive inquiry into the conduct of the Hong Kong

Police Force, which had been filmed on June 12 beating protesters and firing tear gas canisters at nonviolent demonstrators, reporters, and even first responders.

"Five demands, not one less!" became the protesters' rallying cry—a signal that they would not be pacified by half-measures.

"Hongkongers have made it very clear that the five demands have to be met," says Sophie Mak, a researcher for Amnesty International based in Hong Kong. They're increasingly willing to resort to violence to ensure that life in the city does not go on normally if they don't get their way. Is the escalation merely a symptom of pent-up anger, or is it part of a considered strategy to unmask China's abuses before the world?

OPENING THEIR EYES

WELL BEFORE 1997, the year the U.K. turned Hong Kong over to Beijing's control, there were doubts as to whether the territory would continue to enjoy free markets, free speech, and freedom of the press under Chinese Communist Party (CCP) rule. Yet in the early years after the handover, Beijing kept interference in Hong Kong's affairs to a minimum, seeming content to profit from its lax regulatory environment.

"It's China's gateway," says Richard Harris, CEO of Hong Kong-based Port Shelter Investment Management and a long-time resident of the city. "It can be China when China needs it to be; it can be different from China when China needs it to be." Hong Kong had been treated as a hub of trade by the British from the early 1840s, Harris says, and "it's very difficult to erase 170 years of free market thinking."

Underneath that success, however, a younger generation of Hongkongers began to grow restless. They looked at Article 45 of the Basic Law—the territory's mini-constitution—and were eager to see Beijing make good on its promise that "the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." Currently, the chief executive is chosen by an election committee stacked with Beijing supporters.

In 2014, angry over signals that the PRC government would never allow truly free elections in the territory, young protesters and pro-democracy politicians took part in what became known as the Umbrella Movement. Demonstrating outside government headquarters and blocking major city intersections (hence the movement's other name: "Occupy Central"), protesters briefly captured the world's attention. But the effort ended after just two and a half months with no real reforms to show for it.

Five years later, when the Beijing loyalists who govern Hong Kong hatched the idea for the extradition amendment, it seemed people had finally had enough. And not just young radicals; these protests enjoyed far broader public support than the

Umbrella Movement had. As Mak puts it, “2019 was a year where most Hong Kong citizens opened their eyes to and became aware of CCP’s transparent and blatant encroachment of Hong Kong’s autonomy. The Hong Kong government’s incompetence and CCP’s increasingly oppressive and iron-fisted rule had forced people to come out on the streets to communicate their dissatisfaction.”

Joshua Wong, who rose to fame during the 2014 movement and remains a prominent critic of Beijing and its loyalists in Hong Kong, says 2019 proved that “Hong Kong people are dedicated and competent to fight for a brighter future and never kowtow to China under the oppressive regime.”

As the protests progressed, vandalism in the city’s commercial, financial, and political nerve center became commonplace, particularly against companies with “China” in their names. As police tactics—including injudicious use of tear gas, attacks on MTR riders suspected of being protesters, and, eventually, use of live ammunition—increasingly came under fire, clashes between police and protesters became more and more frequent. Certain incidents alarmed even those sympathetic to the pro-democracy movement. Last August, for instance, a group of protesters at Hong Kong International Airport bound and beat a reporter for China’s hawkishly pro-CCP *Global Times* newspaper. In October, video circulated of a crowd of protesters surrounding an investment bank employee who shouted “We are all Chinese!” in the dialect spoken on the mainland and received several punches to the face in reply. Perhaps worst of all, in November, after a middle-aged man accosted protesters, one responded by splashing him with a flammable liquid and lighting him on fire.

More commonly, though, protesters have preferred to attack symbols of Chinese authority, such as by burning the PRC flag and defacing the emblem. U.S. and U.K. flags became frequent sights at protests, with some demonstrators singing “The Star-Spangled Banner” or declaring that the territory should return to colonial rule.

By fall 2019, the protesters seemed to know the odds were against them: Beijing had no intention of acknowledging their demands. But if they couldn’t have democracy, they would at least try to force China into an overreaction that would harm its credibility with the rest of the world.

HONG KONG’S ANTAGONIST

CHINA’S GOVERNMENT, ONCE lauded for its turn away from Maoism and toward (state-driven) capitalism, has always had a ruthless streak: Before the 1984 agreement in which the U.K. promised eventually to hand control of Hong Kong to Beijing, the PRC communicated that it had not ruled out invasion to get back what it considered its rightful territory. Elsewhere, in Tibet,

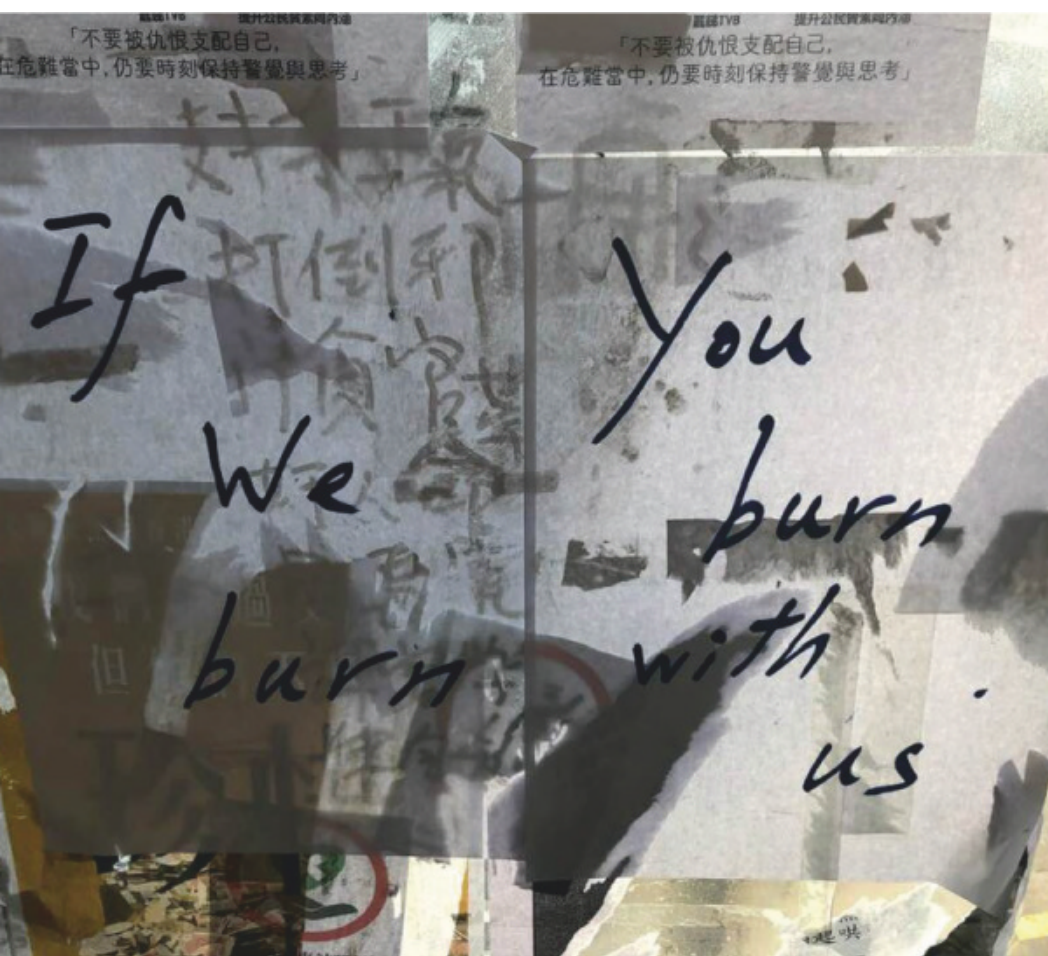
When the government went ahead with plans to vote on the extradition law, the protesters broadened both their objectives and their tactics.

the Chinese government has suppressed uprisings, incarcerated and “re-educated” supporters of the Dalai Lama, and “Sinicized” the region through cultural policies and state-sponsored migration of Han Chinese people. And then of course there’s Beijing’s Tiananmen Square, where in 1989 another group of student protesters demanded democratic reforms, only to be ruthlessly crushed by the People’s Liberation Army (PLA).

All this, moreover, took place before Xi Jinping assumed control of the party in 2012. Xi is generally considered the most powerful Chinese leader since Mao Zedong, and analysts have sharply contrasted him with former leader Deng Xiaoping, author of the country’s turn to capitalism and rejection of Maoism’s one-man rule.

“Deng Xiaoping’s *taoguang yanghui*—‘keeping a low profile’—guided Chinese foreign policy for decades but was gradually ditched during the Xi era,” says Zhiqun Zhu, chair of the department of international relations at Bucknell University. “No doubt Xi is a strong leader with a sense of historical mission.”

Xi has also taken a harder line on territorial claims. Chinese leaders before him sought to bring the “rogue province” of Taiwan closer to the fold by gradually integrating it into the mainland economy. But as Taiwan has sought to assert its distinct and democratic identity under an administration that favors independence, Xi has said Taiwan faces the “judgment of history” if it does not become more cooperative. PLA fighter jets regularly violate Taiwan’s territorial airspace, and the PRC frequently con-



ducts military exercises near the island.

Chinese leaders before Xi sought to tamp down on separatist and Islamicist elements in the western province of Xinjiang. Under Xi, however, an extensive campaign of repression has taken place, with some sources saying that more than 1 million people have been interned. Documents leaked late last year showed that Xi specifically commanded “absolutely no mercy” be shown in the struggle against “terrorism, infiltration, and separatism.”

The case of Xinjiang has weighed on the minds of Hong Kong’s protesters, who have cited it as a demonstration of both Beijing’s ruthlessness and the difference that international attention can make. Unlike little-known Xinjiang, Hong Kong has been a global finance hub for decades and remains home to large numbers of expatriates from around the world. This, Hongkongers hope, is the ace up their sleeve.

THE UPSIDE OF VIOLENCE

WITH LITTLE HOPE that Beijing will agree to their demands for democratization, Hong Kong’s protesters appeared to develop a secondary objective: to force China’s hand, including through violent provocations, to create bad press.

China has long hoped to reassure the world that its rise could be peaceful and that it could coexist with the liberal West. The reason the PRC has not unleashed its military to resolve the protests, as it did in Tiananmen, Zhu says, is that Beijing

knows this “would spell the end of Hong Kong’s autonomy and severely tarnish China’s international image.” Bad publicity would be especially inopportune now, during a respite from a trade war with the United States that observers generally expect to flare up again, and with Taiwan led by an administration whose rejection of a “one country, two systems” formula of its own has been vindicated by the unrest in Hong Kong.

This explains the Hong Kong protesters’ decision to turn to vandalism and iconoclasm, to fight with police, to refuse compromise, and in some instances to assault people who seem to pose little threat to them (as with the investment bank employee mentioned above). Beijing and its loyalists in the Hong Kong government, of course, have had much to say about the approach, declaring the protesters “rioters” receiving support from outside forces hostile to China. In an interview last fall on Germany’s DW News, a pro-democracy student activist struggled to answer pointed questions about the movement’s refusal to condemn violence. The *South China Morning Post* opinion page, where I worked during the first six months of the protests, was inundated with letters and op-ed contributions during that time, some of them wondering whether a Martin Luther King Jr. or a Gandhi would emerge in the SAR.

In fact, the history of nonviolent protest is not so clear-cut. Gandhi may be famous today for his policy of *satyagraha* (non-violent resistance), but he believed that at least one response was worse than the initiation of force: “My nonviolence does not admit of running away from danger and leaving dear ones

unprotected,” he said in 1924. “I would far rather that you died bravely dealing a blow and receiving a blow than died in abject terror,” he said in 1939. “Fleeing from battle is cowardice and unworthy of a warrior.”

Furthermore, *satyagraha*’s applicability elsewhere has been questioned. George Orwell, for one, suggested it would be of little use in a totalitarian system where authorities could use more insidious methods than assaulting their critics openly. Gandhi “believed in ‘arousing the world,’ which is only possible if the world gets a chance to hear what you are doing,” Orwell wrote. “It is difficult to see how Gandhi’s methods could be applied in a country where opponents of the regime disappear in the middle of the night and are never heard of again.”

“Inspirational figureheads can be easily targeted by authorities for punishment and even jail, which would have the effect of dispiriting their followers and discouraging their cause,” Mak says, citing the 2014 Umbrella Movement, which fizzled after protest leaders were arrested.

That raises an additional point: Nonviolent resistance *has* been attempted in Hong Kong; the 2014 Umbrella Movement largely consisted of civil disobedience tactics such as sit-ins, hunger strikes, and occupations of public facilities. While this made figures such as Wong well-known internationally, it failed to produce democratic reforms.

Last year’s demonstrations were also peaceful in their early days. They were largely ignored. The more violent recent protests have delivered only limited success, leading to the suspension and formal withdrawal of the extradition bill but failing to accomplish the protesters’ other goals. The Hong Kong Police Force has not faced any real accountability for its actions during the protests, Carrie Lam and her administration remain in office, and with the new national security law passed this summer, Beijing looks set to crack down even harder.

Still, nonviolence has battered .000 against this regime. And in the district council elections in November 2019, the pan-democratic bloc, which refused to condemn the protests, crushed Beijing-friendly parties that did condemn them—suggesting the protesters’ more aggressive methods have not lost their fellow Hongkongers’ hearts and minds.

WHAT NEXT?

ALL OF THIS has placed the PRC in a bind. In the aftermath of Tiananmen in 1989, the regime faced minimal international consequences. Now? The one thing that seemingly unites the Trump administration with both Democrats and #NeverTrump Republicans is the sense that China is a growing problem. Witness the near-unanimous passage last fall of the Hong Kong Human Rights and Democracy Act, which empowers the U.S. government to sanction individuals from the main-

If they couldn’t have democracy, the protesters would at least try to force China into an overreaction that would harm its credibility with the rest of the world.

land or Hong Kong who commit human rights violations in the SAR, and which requires regular reassessment of the territory’s autonomy. Were China to meet today’s protests with the kind of force it used in 1989, the response would surely be tougher, and not limited to the United States.

While Hong Kong’s importance to Beijing has diminished—it amounted to one-fifth of the Chinese economy at the 1997 handover but is down to 3 percent today—financial experts say its regulatory freedoms, and the global trade they facilitate, still benefit the mainland.

“In order to raise funding in U.S. dollars, mainland firms—both state-run and privately owned—rely heavily on the territory’s financial markets, which are rooted in the city’s independent legal system that is based on English Common Law,” explains Nicholas Spiro, a partner at LaRussa Advisory in London. “There’s no equivalent [to Hong Kong] on the mainland, and it’s highly unlikely that there will be a credible substitute in the foreseeable future.”

That explains why Beijing, rather than sending in its troops, has chosen to crack down legislatively. The recently approved national security law grants Beijing the right to intervene in Hong Kong’s legal system for the purpose of punishing “terrorist” or “separatist” activities. This is a blatant violation of the agreement the PRC reached with the U.K. in 1984, in which China promised to leave Hong Kong’s way of life unchanged for 50 years following the 1997 handover.

“Clearly, Beijing is concerned about the direction of the democracy movement in Hong Kong,” says Bates Gill, professor of Asia-Pacific Security Studies at Macquarie University in Australia. “They are willing to risk some international fallout because, in their view, not cracking down in Hong Kong now would have more serious long-term implications than the short-term international response.”

Kurt Tong, who served as U.S. consul general to Hong Kong and Macau until June 2019, says there were three considerations behind China’s move: (1) protesters’ defiance of Beijing’s authority; (2) the inability of Hong Kong’s government to restrain them; and (3) the sense that U.S.-China relations have already so deteriorated in recent years that Washington’s disapproval would do limited damage. While China has long sought a balance between asserting control over Hong Kong and seeking to benefit from its free market, Tong believes “the calculus has now shifted to making Hong Kong fit into China better.”

Has the PRC overstepped, as protesters hoped? In response to the national security law, the Trump administration announced that Hong Kong can no longer be considered autonomous, and in mid-July, Trump signed an executive order ending the city’s preferential trade treatment, saying Hong Kong will “now be treated the same as mainland China.” Among other things, this means it may not be spared from tariffs should the U.S.-China trade war rage again. Sources I spoke to, however, said such a move was likely to harm Hong Kong much more than it would harm Beijing.

“Taking [Hong Kong’s trade status] away doesn’t hurt China at all, but it does damage certain interests the U.S. has there,” Tong says. “If the U.S. is aggressive...it will create distance between the U.S. and Hong Kong, and China wouldn’t mind that.”

Mak notes that the SAR’s “intermediary” status means mainland elites have “millions of dollars tied up in their Hong Kong accounts.” But revoking this status would amount to giving away the last of Washington’s leverage, she says, and may lead to “Beijing feeling justified to become even more aggressive and to escalate violence against Hong Kong and the U.S.”

The United States has “comparatively little leverage to force Beijing to change direction,” Gill agrees.

Having failed thus far to bring about democratization, the demonstrators had their eyes set on the Legislative Council elections—which carry considerably more weight than the district council elections of last fall—scheduled for September. But at the end of June, Wong told me the protesters were preparing for the possibility of widespread candidate disqualifications among the pro-democracy camp and/or for the cancellation of the elections. This proved prophetic: At the end of July, following a surge of COVID-19 cases in the territory, the Hong Kong government announced that the elections would be postponed by one year. That same week, a dozen pro-democracy

candidates (Wong included) were barred from running. The Hong Kong chief executive claims that public health concerns alone drove the decision to delay the elections.

What might happen if the protesters, enraged by their lack of progress, went even further than they have so far? What if they began targeting public officials for assassination or bombing government facilities? Would they still retain foreign support?

“It’d be harder,” says Tong, especially if Americans died in such attacks. He notes that the U.S. consulate in Hong Kong has consistently defended the right to *peaceful* protest. Unconditional support for demonstrations, even if they turn violent, “feeds the false narrative that the protesters are responding to U.S. direction,” he says, “which is just not true.”

“Governments around the world are unlikely to voice overt support for such violent activities,” says Gill. “In any event, Beijing already believes that foreign governments and organizations are helping foment the protests, and [Chinese officials] prefer to foster such a narrative in order to deflect criticism away from their own mishandling of largely peaceful protests.”

In response to Beijing’s latest effort to assert control over the Hong Kong SAR, the U.K. has offered to accept Hongkongers, even including a path to citizenship. Australia and Taiwan have made preparations for an influx of refugees as well. Many hope the United States will follow their example.

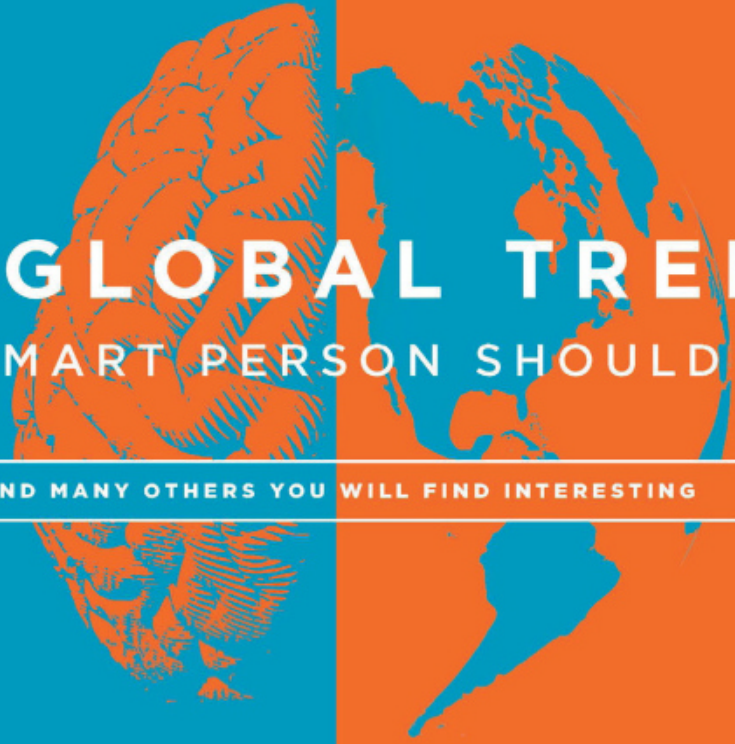
Yet high-profile figures in the democracy movement, such as Wong and media mogul Jimmy Lai, have refused to leave, saying they will continue to fight for the city they love. In the few weeks since the national security law went into effect, that fight has gotten much harder. Pro-democracy politicians have quit politics, social media-savvy young people have gone offline, and libraries and media outlets are preemptively removing books and censoring words that might run afoul of the territory’s new enforcement apparatus. But the defenders of Hong Kong’s autonomy insist the fight is not over—and won’t be over as long as the rest of the world doesn’t lose interest in what’s happening in the SAR.

“We will continue to encourage the outside world...to keep Hong Kong in the global spotlight,” Wong says. He hopes foreign leaders will “let Beijing know that the Hong Kong people never walk alone.” If they don’t, it’s only a matter of time before China turns its sights to Taiwan, he says, and “the rest of the world” after that.

“Foreign governments should keep monitoring the situation in Hong Kong,” Mak says. “Mild diplomatic statements and a few ‘strong words’ are nowhere [near] enough. Turning a blind eye will risk plunging Hong Kong into a state of permanent destruction.” 🗨️

ROB YORK is program director for regional affairs at the Pacific Forum.

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AMERICAN IDOLATRY MEETS WOKE ICONOCLASM

WHY DO PEOPLE PULL DOWN STATUES?

CRISPIN SARTWELL

PROTESTERS WHO PULL down statues are usually not content with removing the inanimate metal or stone object from its pedestal. They berate it, ridicule it, hammer it; they try to set it on fire; when that doesn't work, they're liable to behead it or dump it in a river to drown. Then the authorities retrieve it, as though fishing a corpse out of the lake. They crate it up so it can do no further harm, ship it to a statue internment facility, and forget about it forever.

Sympathetic accounts of the process make it sound quite rational. A statue of a Confederate general or a slave-owning president or Christopher Columbus, looming at you above the public square, might, especially if you are black or Indigenous, make you realize that the people who run and adorn your city aren't like you. In fact, they make heroes out of the sort of people who oppress people like you, and they create a built environment where you might have to make your way through your oppressors' distorted, self-serving interpretations of history every day on your way to the bus stop.

That would be a reason to go to the city council and urge members to hold some hearings on removals and replacements. Screaming at a statue, slapping it around, and then beheading it suggest another level of rage—and another level of interpretation. The statue has come to be identified with the person it represents. Ridiculing the hunk of bronze is ridiculing the represented person and attacking everything that, in turn, that person seems to mean. Traditionally (in the French Revolution, for example), pulling a statue off its pedestal is symbolically overthrowing or expunging the leader or ruler it depicts. One of the first things American soldiers did when they got to Baghdad was pull down the colossal Saddam Hussein. Reporters and television crews covered the toppling of the statue obsessively; it may be the best-remembered image of the Iraq invasion. Overthrowing Hussein and pulling down his statue didn't seem to be clearly distinguished in anyone's mind.

Monuments are often fated to become effigies, their destruc-

tion a premonition of the fall of the leader and the transformation of his symbolic order. In other cases, the destruction of the monument is a reenactment of the death or dismemberment of the leader that has already taken place, a way of killing him over and over even if he died in his sleep, as in the fate of thousands of statues of Stalin after the fall of the Soviet Union. Robert E. Lee is dead, but that doesn't mean we shouldn't kill him again (and again) in his images. What was "he" doing still hovering over the city of Richmond in 2020, anyway?

President Donald Trump's response to this has also been traditional, indeed ancient. Appearing on Independence Day in front of one of the world's largest sculptures, he said: "Today, we pay tribute to the exceptional lives and extraordinary legacies of George Washington, Thomas Jefferson, Abraham Lincoln, and Teddy Roosevelt. I am here as your president to proclaim before the country and before the world: This monument will never be desecrated, these heroes will never be defaced, their legacy will never, ever be destroyed, their achievements will never be forgotten, and Mount Rushmore will stand forever as an eternal tribute to our forefathers and to our freedom." Then he announced that the "ringleader" of the "attack" on a statue of Andrew Jackson in D.C. had been arrested.

Trump further declared that he was issuing executive orders to make assaults on statuary punishable by 10 years in prison and to establish a "National Garden of American Heroes," featuring a hundred or more sculptures depicting the likes of Davy Crockett, Amelia Earhart, Billy Graham, Douglas MacArthur, Dolley Madison, Audie Murphy, George S. Patton Jr., Ronald Reagan, Betsy Ross, and both Booker T. and George Washington. Sounds like the world's least dynamic amusement park, but perhaps they'll add some animatronics.

Trump's claim that Rushmore "will never be desecrated" makes clear that he, and we, still understand the mentality of the idolater: Damaging a statue of Andrew Jackson is contaminating a sacred object, which makes the act outrageous. But the



fact that the act of desecrating a statue outrages the idolaters is precisely what drives the iconoclasts; it's the veneration of the person embodied in the inanimate object and in its placement and presentation that makes damaging or destroying it a symbolically powerful act. That's how you get these idol wars.

The conflict between worshipping and destroying images, between idolatry and iconoclasm, is found in some form in almost every human culture. One classical depiction is in the Hebrew Bible. Moses returned from a mountaintop talk with Yahweh to find the Israelites worshipping a golden calf. "He took the calf the people had made and burned it in the fire; then he ground it to powder, scattered it on the water and made the Israelites drink it." Then he set them to slaughtering each other. Ever since, there have been restrictions on images: The Jewish God can definitely not be sculpted, and similar, sometimes harsher, restrictions have run through Islam. The Protestant Reformation of the 16th century was to a remarkable extent a conflict about the use of images in worship, with the Protestants accusing the Catholics of worshipping paintings and sculptures, and hence of being pagans and polytheists. The Protestants destroyed images all over Europe.

Now, if you ask me squarely whether I'd rather be an idolater or an iconoclast, I'm likely to answer "an iconoclast," because that sounds unconventional and interesting; I'd rather be an overthrower of shibboleths than an enforcer of them. Also, idolatry still sounds wildly irrational, as though we were worshipping the Great God Yottle, the omnipresent hunk of bronze.

But the image breakers seem rather irrational too, venting their rage on inanimate objects as though that would be a substantive blow against racism or whatever else they take themselves to oppose. It's a bit like trying to suspend time by taking a hammer to your clock radio.

Irrational though it may be, the idolatry that leads to

colossal Lincolns and Jeffersons in D.C. is routine for us all. On July 4, Trump described America as "uplifted by the Titans of Rushmore," the event as taking place "before the eyes of our forefathers," just as though the presidents were alive still and inhabiting their giant rock faces. He spoke of the woke iconoclasts as "ripping down Washington and Jefferson" (the men, not their images, mind) and as literally destroying American history; it appears that the level of symbols and the level of reality have been entirely confounded. But any child might point at an equestrian statue and ask, "Who's that?" To which the answer is "Robert E. Lee" or "Napoleon," not "that's not a person—it's a hunk of bronze." I regularly say things like "I saw Trump on television" rather than declaring that I saw a very small, flat image of Trump. We

all slide between representation and reality with great ease. Perhaps too great, because it leaves us vulnerable to elementary and sometimes bizarre confusions.

In other words, I'm more interested in what idolaters and iconoclasts have in common than the millennia-long conflict raging between them. Both sides evidently are working from a belief in what anthropologists once termed "sympathetic magic": the idea that a person or a god inhabits, is actually present within, the representation. One worships the god in and as the statue, or one attacks the emperor by defacing his image. Harming an image of your enemy has the power to harm your enemy; gazing at a prospective lover's or even a celebrity's picture puts you under their spell, "enchants" you. Images are often reported to weep, or heal, or speak. Or they seduce and corrupt, and must be defaced, hidden, or destroyed. The idol of today—the colossal Stalin, and perhaps even the mountain-size president-gods of Rushmore—is fated for desecration tomorrow. Idolaters and iconoclasts need each other.

They share a belief in—really, a vivid, immediate experience of—what the art historian David Freedberg, in his 1989 book *The Power of Images*, called "fusion": the presence in the image of the person or thing or god of which it is an image. In fusion, Freedberg writes, "the body in the image loses its status as representation"; it becomes, in the mind of the idolater or the iconoclast, what it depicts. "Arousal ensues," says Freedberg (he's got the response to pornography in mind, as well as patriotic or religious fervor): positive arousal to adoration in the case of the idolater, negative arousal to loathing, disgust, or rage in the case of the iconoclast.

"The iconoclast," Freedberg continues, "sees the image before him. It represents a body to which, for whatever reason, he is hostile. Either he sees it as living, or he treats it as living." Either way, "he feels he can somehow diminish the power of the

represented by destroying the representation or mutilating it.”

Freedberg argues that things have changed little, that we still experience just as vividly as ancient cultures the presence of the thing in the image. It’s a hard feeling to escape, really. If you think you are immune to it, consider how you might feel if I stood in front of you and slowly ripped a picture of your mother in two. I doubt that ancient Byzantium or Reformation Europe can boast any clearer cases of the conflict between idolaters and iconoclasts than the scenes from Philadelphia in May and June, in which some people attacked while others tried to defend statues of Christopher Columbus and former Mayor Frank Rizzo (both of whom have “iconic” status in certain neighborhoods of South Philly). Certainly, it is hard to imagine such a conflict breaking out over an unshaped hunk of metal. Freedberg argues that it’s the resemblance of the statue to the person that lends it power: the power to make that person, even if he’s been dead a long time, manifest in the physical reality of the present.

But the “magical” identification of an image with its human inspiration goes only so far to explain widespread paroxysms of iconoclasm of the sort that occurred in eighth century Byzantium, in the Netherlands during the Reformation, during the French Revolution, or on the streets of America in 2020. Who controls public space, and hence who gets honored in public space, is a relatively raw vector of power. When the municipal or federal government is erecting and protecting images, tearing images down can become a generalized expression of anti-authoritarianism.

That’s the turn of mind that turns iconoclasm from occasional vandalism, or even a focused demand to reinterpret history, into a widespread outbreak of symbolic violence indiscriminately directed at publicly venerated images in general. We reach the point at which there is a loathing not only for specific historical symbols but for the whole authoritative symbolic order, right down to its approved artistic styles and the ways it orders public space. Pretty soon you’re tearing down anything that looks like a realist sculpture. Historical outbreaks of iconoclasm have often followed that pattern, progressing from criticism of specific sorts of images to what almost amounted to an attempt to erase or replace all images. Notoriously, the current wave of iconoclasm has not always distinguished between (images of) Robert E. Lee and (images of) Ulysses S. Grant, between images of slaveholders and images of abolitionists.

Even if we admit that we are all somewhat susceptible to sympathetic magic, we need to maintain some distance and distinctions if we intend to stop short of sheer superstition. Nothing you can do to his statues will alter history so that Robert E. Lee never existed. And as many totalitarian regimes have shown, it’s a lot easier to change all the pictures and sculptures than it is to change people’s minds or the concrete conditions in which they live. 

CRISPIN SARTWELL is an associate professor of philosophy at Dickinson College and the author of *Political Aesthetics* (Cornell University Press).



The Sins and Virtues of New Religions

Occultists, social justice warriors, and techno-utopians may not look like the Christians of yore, but they're more religious than they realize.

LIZ WOLFE



VER THE LAST 15 years, two growing groups of people have been drifting away from traditional organized religion. One is the “Nones,” the 25 or so percent of American adults who consider themselves religiously unaffiliated. The other—which overlaps with the first—is the “Remixed,”

Tara Isabella Burton’s term for people who blend traditional faiths with “personal, intuitional spirituality.”

Burton, a journalist with a doctorate in theology, discusses both cohorts in *Strange Rites*, a book about Americans who reject traditional religious dogmas and labels. These people are often churchless and sometimes godless. But that doesn’t mean they’ve rejected religion. Many of them simply worship different things.

What counts as religion is crucial. Are erstwhile presidential hopeful Marianne Williamson’s Oprah-endorsed self-help books religious texts? What about the life-hacking, mushroom-coffee-guzzling, four-hour-everything works of productivity guru Tim Ferriss?

For Burton’s purposes, religion consists of meaning, purpose, community, and ritual. By *meaning*, she means some way of demarcating the line between good and evil, coupled with a sense of what life is fundamentally about. By *purpose*, she means your own role within that meaning. By *community*, she means the people you rely on. And by *ritual*, she means how you and your group mark the passage of time together, with acts of mourning, celebration, coming of age, penitence, and commitment to the faith.

Within that framework, Burton finds religion among SoulCycle obsessives, social justice warriors, far-right atavists, kink and polyamory communities, and Silicon Valley techno-utopians. As with the faith traditions of yore, they all have *something* that provides them with meaning, purpose, community, and ritual.

This rise in choice is good for personal autonomy, but these new religions tend to be thin on community building. Burton’s thoughtful analysis bolsters the sense that these young, syncretic religions might be less durable than traditional communities of faith.

ONE OF THE chief differences between today’s remixed faiths and conventional institutionalized religions is the premium the former place on personal experience, which is often considered irrefutable.

Wellness culture, from SoulCycle to meditation apps to the Goop empire, relies on this exalted interiority. “It’s a theology, fundamentally, of division: the authentic, intuitional *self*—both body and soul—and the artificial, malevolent forces of *society, rules, and expectations*,” Burton writes. “Our sins, if they exist at all, lie in insufficient self-attention or self-care.” Techno-utopians, meanwhile, are interested in how biohacking can maximize and make up for the limitations of the natural self. Occultists sometimes marry components of wellness culture with explicitly political messaging: Burton describes occult literature on how “to cast a spell to ensure resilience after a long day of protesting” and why curses can be “the only avenue for justice available to the downtrodden.”

The social justice community has a different take on the politics of personal experience, one built more on self-effacement than on self-exaltation. Its members, Burton argues, hold “two seemingly contradictory ideas about the self. The first is that, insofar as we are marginalized, society has warped our fundamental goodness. We have some form of a desirable, natural state that an unjust society has taken from us.” But that exists alongside a belief that the “inherent self does not actually exist...our entire identities are so inextricably linked to our social place that we have no selves outside them.”

An absence of established dogma, hierarchy, and tradition can be freeing. Burton details the origins of kink culture in the late-1970s Golden Age of Leather, when many gays were still closeted. “Prior to this subculture’s shattering encounter with HIV,” the historian Guy Baldwin once wrote, “a gay man in search of his kinky identity and fulfillment would eventually cross a threshold into leather space (leather bars, gay motorcycle events, special parties) for the first time....To think of it as merely sexual is to miss the scope of it entirely.”

Burton describes the old order as “concentric circles of communal obligation” in which a married couple was the core, aided by its extended family and helped along by a neighborhood and church. Now the rules have changed. Weddings and funerals, freed from traditional formats, have little preordained structure. “You’re on your own. You have to figure it out, explain it to people, rent the space, find

people, figure out how to write up your own program,” the sociologist Phil Zuckerman tells Burton.

When a New York social worker’s queer husband died, Burton writes, she “declined to attend the memorial service hosted by her husband’s family in his hometown,” because they were “born-again Christians, uncomfortable with both her husband’s sexuality and his interest in the occult.” Instead, Burton elaborated in *Vox*, “a Jewish friend recited the Mourners’ Kaddish. The group told stories—some reverential, some ‘bawdy’—that reflected all aspects of Jon’s personality. They played an orchestral rendition of the theme song to *Legend of Zelda*, Jon’s favorite video game.”

BURTON SEES CONSENT as the “foundational basis” for kink communities, and she extrapolates that this speaks to a deeper worldview: “We are totally free beings, beholden to nobody but ourselves. Exerting that freedom, furthermore, is at the core of what it means to pursue the good. Our choices, in this model, both define and liberate us.” This dual emphasis on consent and choice can be important for groups that were not previously able to explore the contours of their freedom in the light of day.

But having fewer cohesive principles comes at a cost. A focus on personal experience doesn’t always work against building community—shared experience can be a powerful social glue—but it often does. In none of these belief systems is there an explicit call to always love your neighbor as you love yourself, or to care for the poor and downtrodden regardless of their sins and failings, or to work to conquer your own vanity and self-indulgence. The social justice community comes closest, but it does not extend its gospel of dignity to those who engage in problematic behavior.

The bespoke communities of the Remixed and the Nones often have little room for children, the elderly, or people

Each group has something that provides it with meaning, purpose, community, and ritual.

with severe disabilities. Sometimes this exclusivity is accidental, other times intentional: Many in the kink and poly communities disapprove of monogamy, while some members of the occult, social justice, and wellness cultures find little help navigating the hardships of parenthood, if only because they’re severely outnumbered by the childless.

At their best, traditional faiths bring those groups in. A *Christianity Today* headline from 2018 reads, “My Son’s Down Syndrome Showed Me the Real Imago Dei.” The Book of Numbers (and accompanying midrash) make clear the importance of honoring elders within the Jewish community. Some of the goodness of these traditions stems from the fact that the Bible communicates a profound message about human worth. That might be part of why it’s been such a durable document, attracting adherents over centuries.

THE NONES AND the Remixed may be more common than they used to be, but they are not new. *Strange Rites* covers plenty of precursors, from the Oneida Community’s mid-19th century free-love experiment to the Social Gospel movement of the Progressive Era and its influence on midcentury Protestantism, which “did not stress dogma or, in many cases, even metaphysical truth, but rather a utopian vision of what a truly ecumenical, social-justice-focused Christian world would look like.” Early American colonists supplemented their formal faiths with fortune telling and astrology; one could call them remixed too.

When *Strange Rites* falters, it’s because Burton tackles too much. She attempts to conduct a full autopsy of groups ranging from far-right “incels” to biohackers in just 250 pages, laying out the relevant history as well. Inevitably, some points are left underdeveloped. She raises the issue of some of these subcultures’ lack of socioeconomic and ethnic diversity, for example, but hardly digs into the implications.

But it’s a rich book, one that gave me insight not just into my society but into myself. I used to be an atheist, today am a Christian, and am certain the evangelical church that I currently attend won’t be my final spiritual landing spot. An Eastern Orthodox depiction of Jesus hangs in my home, I’ve been deepening my understanding of scripture by learning about the Jewish Sabbath, and I don’t think weed or psychedelics should be verboten for believers. In other words, I’m remixed. But that syncretic faith has been a gateway drug to something more like traditional religion, drawing me to a place of sturdier Christian belief and more durable community. And I don’t think I’m the only one who can say that. 🍷

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Strange Rites: New Religions for a Godless World, by Tara Isabella Burton, PublicAffairs, 320 pages, \$28

Will Anyone Ever Be Able To Build Again in San Francisco?

CHRISTIAN BRITSCHGI



OW DID THE richest state in the country end up with its worst housing crisis? And is there any politically practical way out of its mess?

Those are the two questions running through Conor Dougherty's *Golden Gates: Fighting for Housing in America*. The book takes a

deep dive into the struggle people undergo to find shelter in ultra-expensive California—specifically, in the San Francisco Bay Area.

Zoning policy is about as sexy as a four-hour municipal land-use hearing, so it's no mean feat that Dougherty is able to transmute regulatory minutiae into a breezy, character-driven narrative that illustrates the central reason so many cities are so damn expensive: "a dire shortage of available housing in places where people and companies want to live." *Golden Gates* pays attention to academic research—particularly the work of the Harvard economist Edward Glaeser—but the book isn't a tangle of numbers and white-paper citations. Instead, it tells its story through the eyes of a set of characters: an East Coast transplant who manages to kickstart a pro-development revolution, a Catholic nun who leverages tech-industry donations to keep gentrification at bay, a city manager who'd rather resign than sign off on a shrunk housing project, and so on.

Dougherty is far from a libertarian ideologue—he's an economics reporter at *The New York Times*—but his supply-and-demand story will have pro-market readers mostly nodding along in agreement. "Because U.S. cities don't accommodate new people or housing nearly as well or as eagerly as they used to," he explains, growth in these cities "has caused new residents and speculators to bid up the prices of the not-enough housing that already exists." And the chief reason the region can't accommodate that new housing is over-regulation.

THE FACT THAT California has a housing shortage doesn't require a ton of proof. Much of *Golden Gates* is therefore devoted to explaining how that shortage occurred and why it's so intractable.

The crux of the book's argument is that the rapid growth of such industries as tech and finance has produced an intense

demand for homes and offices in a handful of large metro areas. Meanwhile, those same metros—whose politics are dominated by a mix of exclusionary suburbanites, urban anti-development activists, and environmentalists—have spent the past five decades erecting planning codes that are unfriendly to the needs of a growing local economy.

In the wake of World War II, America managed to provide cheap and abundant housing in ever-expanding suburbs. Dougherty argues this is no longer feasible for a litany of reasons: many high-growth industries require dense clusters of firms and employees, commute times from the urban fringe to downtown can only grow so long, and the climate can't handle more auto-centric development.

That means new housing has to go where people already live, producing the intense, often ridiculous backlashes that have made California development spats famous.

It's a broadly compelling story, but it occasionally runs off the rails. California's various movements to cut taxes, reduce public spending, and contract out government services come in for criticism, with Dougherty arguing that localities largely achieved those results by zoning out poorer residents who pay little in taxes but demand a lot in services. There is some truth to this, but it's hard to square Dougherty's story with California's centralized state government and its high per-capita levels of taxation and spending.

The book's coverage of the present day focuses on two groups who have been particularly ill-served by the state's dysfunctional housing market: longtime working-class residents of the Bay Area, and newly arrived upwardly mobile professionals.

The first group has produced a grassroots tenant movement dedicated to fighting unpayable rent increases and eviction notices on a building-by-building level. The second group forms the core of the Yes In My Backyard (YIMBY) movement, which wants to repeal the limits on development that produce those unpayable rent increases and eviction notices in the first place.

It's an uphill battle. The costs of repealing existing regulations would fall on a small number of privileged activists and zealots who have the time and ability to organize against reform, while the benefits of liberalization would be spread out over thousands, if not millions, of unconnected people who find it hard to form a coherent coalition. Homeowners and landlords—eager to preserve their views and their prop-



erty values—are the only ones with any real say over development; the potential renters who might move to town one day don’t get to vote at all.

Dougherty quotes Sonja Trauss, a math teacher turned YIMBY activist, making that point to the City Council of Lafayette, a wealthy (and rabidly anti-development) suburb of San Francisco. With an issue like a sales tax, Trauss says, “both sides have an opportunity to show up and say whether they’re for or against it.” But the renters who would move into a development if more building were allowed “don’t know who they are yet. Some of them are not even born.”

THE BOOK’S YIMBYS are frequently at pains to dissociate themselves and their message from anything that smacks too much of free markets. One activist declares that he doesn’t want the movement to be dominated by “libertarian fuckboys.” Some YIMBY groups stick their proposals for more housing development into policy platforms that are heavy on increased transit funding and demands for rent control.

Through a mix of clever activism, strategic lawsuits, and tech industry support, these YIMBYs have been able to score some local policy wins, get a few of their allies elected to office, and even pass some state-level housing reforms. But by the time *Golden Gates* wraps up in late 2018, the YIMBY star was starting to wane. Trauss got annihilated in her run for a San Francisco Board of

Supervisors seat, the state legislature rejected ambitious housing reforms, and factional disputes about personality and policy started to cleave the YIMBY movement.

As compelling as its “build, build, build” message is, the YIMBY movement is much too small to get its policies enacted all on its own. It needs allies. But who?

The answer preferred by many YIMBYs (and perhaps by Dougherty, though he’s not too bullish on its prospects) is a coalition with tenant activists. The resulting alliance would mix demands for less regulation on development with more funding for affordable housing and stiffer protections for tenants.

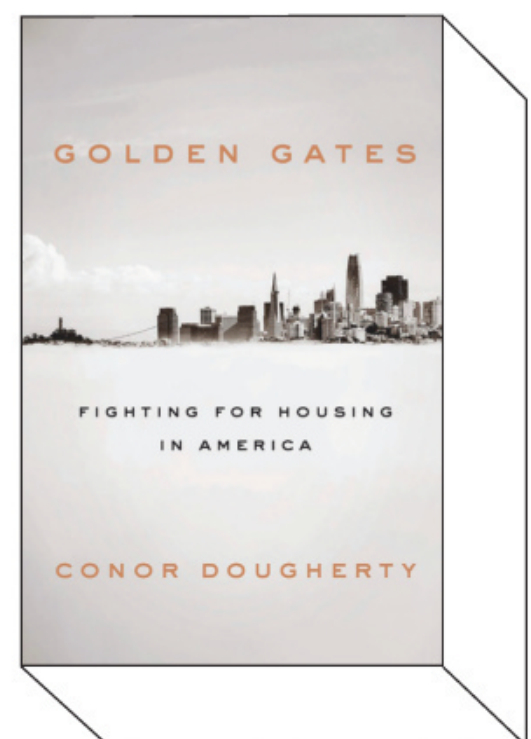
“More housing generally, more subsidies for those who needed them: that two-sided equation constituted the median view of good housing policy,” Dougherty writes, arguing the real obstacle to this unifying platform is bad politics, not mutually exclusive visions. He criticizes Trauss and others for bombastic rhetoric that alienates possible allies, arguing that when someone, say, compares anti-gentrification activists to nativist Trump supporters, it turns off tenant advocates who “regard YIMBYs as suspicious at best and the enemy at worst.” Yet it’s hard to see how a movement that wants more development can have more than a temporary alliance with the figures who currently dominate the tenants’ rights movement.

Events that have transpired since the book’s conclusion make that clear. *Golden Gates* closes with an anecdote about a 2018 national YIMBY conference, YIMBYtown, in Boston, where a lecture about building alliances between YIMBYs and “equity groups” was interrupted by protestors from said equity groups demanding that the assembled YIMBYs follow their lead on housing policy. Since then, the same Boston-area equity groups have filed federal housing complaints targeting the proposed redevelopment of a dilapidated racetrack into 10,000 new units of housing.

In 2019, YIMBY groups and YIMBY-aligned legislators joined tenant activists in throwing their support behind a statewide rent control bill in California, even though the law is likely to decrease investments in new housing. Come 2020, those tenant groups largely sat on the sidelines or actively opposed a failed YIMBY-backed bill to allow more housing construction near transit and job centers.

There is no easy answer here. California’s housing shortage was decades in the making. Fixing it may take even longer. [📌](#)

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Golden Gates: Fighting for Housing in America, by Conor Dougherty, Penguin Press, 288 pages, \$28

Seeing Like an Anarchist

How former slaves built an autonomous, self-sufficient, and nearly stateless society in the mountains of Haiti, and how they lost it

JESSE WALKER



IN MEDIA AND popular consciousness, Haiti has become identified with hunger,” Johnhenry Gonzalez observes in *Maroon Nation*. But in the 19th century, after the revolution that drove out the French slaveowners and before the invasion that brought in a U.S. occupation, the country saw

“a free system of decentralized, small-scale agriculture that allowed for unprecedented demographic growth.” In the century that followed Haiti’s 1804 declaration of independence, the country’s population more than quintupled. This, Gonzalez tells us, was “the steepest and largest instance of demographic expansion in Caribbean history” to that point.

This was not because the revolutionary state pursued enlightened policies. Slavery was formally abolished, but forced labor initially continued: Cultivators were still compelled to work the fields, were denied the right to leave without permission, and were legally restrained from choosing their own employers, let alone striking out on their own. To enforce these rules, post-revolutionary rulers pioneered new forms of state control, creating what Gonzalez, a historian at the University of Cambridge, says may be the world’s first “mandatory system of identification documents for all citizens.” They also conscripted soldiers, seized the former slaves’ property at will, deployed brutal forms of corporal punishment, and cracked down on “vagrancy”—that is, on freedom of movement. “In practice,” Gonzalez writes, “the universal declarations of equality and liberty that grew out of the Haitian Revolution were universally violated by all early Haitian regimes.”

It would be wrong to treat these post-revolutionary leaders as a unified group with a common vision. They differed, for example, on whether those sugar fields should be directly owned by the state. But nearly all of them thought it necessary to prop up some version of the plantation system.

Yet they couldn’t, because they weren’t ultimately in control.

In Haiti, unlike so many other rebellions around the world, the revolution didn’t stop when a new ruling class seized power. The people kept resisting—sometimes indirectly, just by fleeing to the island’s mountainous interior, and sometimes directly, by burning the sugarcane fields they left

behind. And eventually, mostly, they won. The plantation economy was not restored. Hoping to avoid further unrest, the government stopped trying to restrict free movement and free contract, and it slowly started to recognize at least some of the populace’s informal land claims. With both free labor and free land in play, the plantations were doomed.

What emerged instead was far from flawless, and Gonzalez refuses to romanticize it. But “for black people in the nineteenth century,” he argues, “it was the closest thing to a free country that existed anywhere in the New World.” Space was plentiful, and land prices plunged. An economy of self-employed farmers, fishers, loggers, and smugglers emerged, with a pronounced tendency toward privacy, polyculture, and less labor-intensive work. In the towns, an urban elite ran a meager state that Gonzalez describes as “little other than a commercial taxation apparatus that supported an inward-looking military.” But in the countryside, power belonged to an anarchic meshwork of secret societies, Vodou assemblies, family compounds, informal marketplaces, and other grassroots institutions devoted to production, protection, pleasure, worship, trade, and mutual aid.

Runaway slaves known as *maroons* had been settling in remote regions for centuries, and parts of this social order evolved from their older institutions. Gonzalez called his book *Maroon Nation* because he sees most of 19th century Haiti as a vast maroon zone, a place where the sorts of social organization that ordinarily are confined to a country’s crevices became the nation’s dominant institutions.

Foreigners frequently viewed this process with distress. “To North Americans and Europeans who visited the early Haitian republic,” Gonzalez recounts, “nothing had ever looked so tragic as a crumbling sugar works being reclaimed by the jungle or a group of black people riding horses or napping rather than toiling in the sun.” Those riders and nappers, working for themselves on their own terms, did not publish a rival account of their world, but Gonzalez gives us good reasons to imagine that they saw this life not as a tragedy but as well-fed freedom.

That said, there were limits to their liberty. Despite those smugglers, for example, the urban elite had a near-monopoly on external trade. (Its controls faced outward as well as inward: The country’s constitution barred foreign ownership of Haitian land.) And there were, as always, social problems, from

illiteracy to public corruption. “Rather than an unmitigated victory for either side,” Gonzalez argues, there was “a kind of prolonged, complex stalemate or war of positions.” Ordinary Haitians carved a space for themselves, but the rump ruling class fortified its position too. “By denying the rural masses any hope of formal education and confining them to the rustic freedom of decentralized crop production and marketeering, the elite jealously guarded the foreign trade and state revenue that represented the well-spring of their privilege.”

But those rural masses had far more room for free, autonomous activity than their counterparts in other post-emancipation societies. In his influential 2009 study *The Art of Not Being Governed*, the Yale political scientist James C. Scott—who also edits Yale University Press’s Agrarian Studies Series, which published Gonzalez’s book—describes a portion of Asia, dubbed Zomia, where geographic barriers allowed the hill people to escape the slavery, conscription, and taxes imposed by governments in the valleys. *Maroon Nation* shows something similar 700 miles southeast of Florida: a black Zomia in the Americas.

This social ecosystem persisted for decades, decaying only after two nearly simultaneous developments in the early 20th century. Just as the country’s population was finally beginning to fill the available space, introducing a greater degree of scarcity to the island’s resources, external forces intervened: In 1915, U.S. President Woodrow Wilson ordered an invasion of Haiti, and the troops stuck around as occupiers until 1934. (A few years into that occupation, future president Franklin Roosevelt, then serving as assistant secretary of the Navy, took charge of writing a new constitution for the country.) The puppet government adopted a number of repressive policies, including censorship, Jim Crow-style segregation, and—yes—forced labor. Elements of the

old grassroots rural order persisted. But the balance of power shifted, and the corrupt and brutal regime in Port-au-Prince was able to extend its authority without doing much for the population in exchange.

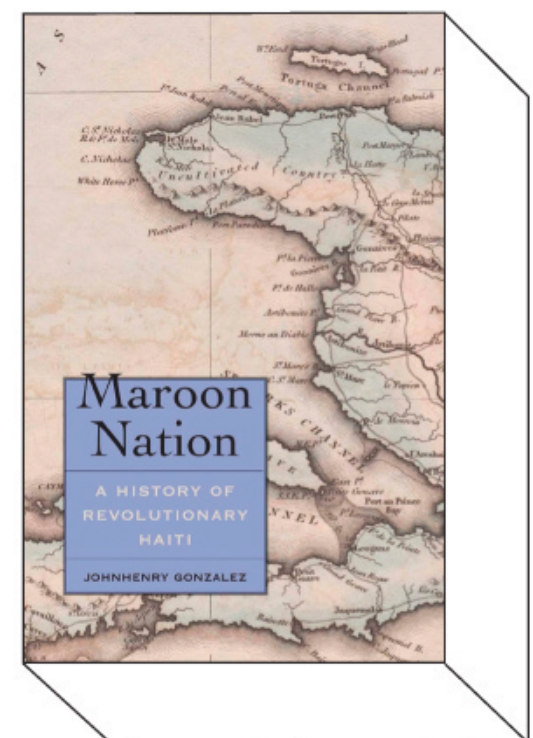
The results are on display in that desperately poor nation today. But there isn’t a direct line from the revolution against the French slavocracy to the poverty of the present. In between, the country took a long detour in a far more appealing direction.

Needless to say, *more appealing* does not mean *perfect*. Gonzalez cautions against viewing 19th century Haiti as “a tropical anarchist utopia, or an ideal libertarian free market.” This is not just because of the statelet that persisted in Port-au-Prince; it is because the same people who avoided the vast hierarchies of the state and the plantation system sometimes set up mini-hierarchies of their own. Small-scale servitude persisted, and at times those grassroots institutions mimicked the forms of the state apparatus. (Some secret societies, Gonzalez notes, “adopted the ceremonial practice of controlling nocturnal travel in their areas by issuing special passports”—a distorted echo of the movement-restricting internal passports issued by both the French planters and the early Haitian revolutionary regimes.) Of course, the same topographic and social factors that allowed so many Haitians to evade the authorities and adopt a self-sufficient lifestyle may have also made it easier to break away from a more intimately situated martinet as well, helping to limit these smaller forms of domination. But we don’t have the sorts of records that would let us know how common such circumventions were.

Yet we know much more than we used to, thanks in part to this rich book. By recognizing the agency of ordinary Haitians and exploring the world they built, Gonzalez reveals dimensions untouched by conventional historical

accounts. “Like the very political leaders they study,” he says, intellectual and political historians “often imagine that state authorities are somehow sovereign over larger processes of social and economic change. What is most interesting about the emergence of Haiti’s counter-plantation system is not that it reflected the revolutionary aspirations of any particular leader but rather that it rose up in spite of *all* Haitian rulers’ relentless attempts to reconstitute the plantation system.” James C. Scott’s most famous book is called *Seeing Like a State*. As he probes past the activities of the men who merely sat atop Haiti’s governments and shows the activity taking place beyond their reach, Gonzalez inverts that: He lets us see like an anarchist. 📖

Books Editor JESSE WALKER is the author of *The United States of Paranoia: A Conspiracy Theory* (HarperCollins) and *Rebels on the Air: An Alternative History of Radio in America* (NYU Press).



Maroon Nation: A History of Revolutionary Haiti, by Johnhenry Gonzalez, Yale University Press, 302 pages, \$40



VIRAL VIDEO LOSE YO JOB

JESSE WALKER

If the movement against abusive policing has an anthem, it's "Lose Yo Job," a rap spontaneously composed by Johnniqua Charles as she was detained outside a strip club in South Carolina in February. A video shot that night shows her wagging her butt and taunting a security guard as he holds her by the elbow. "You about to lose yo job," she chants. "You about to lose yo job/ Get this dance! You about to lose yo job/ 'Cause you are detaining me for *nothin'*."

Charles was eventually released, and the guard himself later posted the video online, declaring "that rap was lit." It went viral on a small scale, and then a remix by the producers DJ Suede and DJ iMarkkeyz went viral on a *huge* scale. It was helped along by an absurdist video featuring unauthorized cameos by everyone from Beyoncé to Elmo. More pointedly, the video showed the Minneapolis cops charged in the death of George Floyd. Soon activists were chanting the lyrics at demonstrations.

Since the song took off, Charles has raised more than \$55,000 on GoFundMe. And the security guard? He still has his job, and *TMZ* reports that the video has landed him offers to work elsewhere too. 

BOOK MARIJUANA FEDERALISM

JACOB SULLUM

While 33 states have legalized marijuana for medical or recreational use, the federal government recognizes no exceptions to pot prohibition. *Marijuana Federalism*, an essay collection edited by Case Western Reserve law professor Jonathan Adler, maps some promising pathways through this cannabis conflict.

Duke law professor Ernest Young argues that the combination of limited federal resources and the anti-commandeering doctrine, which implies that Congress cannot compel state officials to enforce federal drug policies, means states can effectively nullify marijuana prohibition in most of its applications. But as University of Alabama law professor Julie Andersen Hill notes, that observation provides little reassurance to banks, which will continue

to eschew marijuana money until Congress removes the threat of criminal penalties and potentially ruinous regulatory sanctions.

Hastings College of Law professor Zachary Price thinks the Obama administration's policy of prosecutorial restraint regarding state-legal marijuana activity, while constitutional, set a dangerous precedent for flouting the will of Congress in less appropriate circumstances. Vanderbilt University law professor Robert Mikos proposes a broader solution: revisiting the rules governing federal preemption of state laws, an issue raised by a 2018 Supreme Court decision allowing state legalization of sports betting.

Getting closer to the heart of the matter, University of Chicago law professor William Baude questions the legal basis for the comprehensive national ban on marijuana, which unlike alcohol prohibition was imposed without amending the Constitution. Baude suggests a narrower understanding of Uncle Sam's authority over pot would help restore the proper balance between state and federal power. 

ALBUM RTJ4

PETER SUDERMAN

In times of crisis, pop culture often takes on inadvertent meaning, reflecting and refracting the darkness of the times. But few works can manage the eerie prescience of *RTJ4*, the rowdy, angry, superbly calamitous fourth album by hip-hop duo Run the Jewels, which chronicles a chaotic world in semi-apocalyptic meltdown, beset by police abuse and racial injustice.

The album was released in early June, just days after protests over the killing of George Floyd by Minneapolis police turned destructive in cities across the country. Although it had been in the works for years, the music seemed like it had been willed into existence as a byproduct of the demonstrations.

In the album's haunting centerpiece, "Walking in the Snow," Killer Mike raps about the gruesome spectacle of police violence and the performative online outrage that often seems to follow: "And every day on evening news they feed you fear for free/ And you so numb you watch the cops choke out a man like me/ And till my voice goes from a shriek to whisper, 'I can't breathe'/ And you sit there in the house on couch and watch it on TV/ The most you give's a Twitter rant and call it a tragedy."

The lyrics were so on-the-nose that Run the Jewels member El-P had to clarify that they'd been recorded the previous year—an uncanny reminder that the present crisis actually began long ago. 

DOCUMENTARY

THROW A BILLION DOLLARS FROM THE HELICOPTER

ERIC BOEHM

When voters in Arlington, Texas, approved a 2016 referendum to replace their then-22-year-old ballpark with a new retractable-roof stadium, the \$1.1 billion project appeared to be more on the up-and-up than were some other recent ballparks. Around the same time, teams based in Atlanta and Miami were also getting upgraded stadiums via backroom deals and public deceit.

Don't be fooled. *Throw a Billion Dollars From the Helicopter*, a documentary from Michael Bertin now streaming on Amazon, reveals how city and team officials beanballed opponents of the new Arlington stadium, called Globe Life Field, to win the referendum.

Arlington Mayor Jeff Williams is the prime villain. After he was elected on promises of cutting government, he transformed into the lead cheerleader for the project. Meanwhile, Rangers team owners Ray Davis and Bob Simpson—two of the richest people in Texas, Bertin points out—spent more than \$2 million to convince voters to pitch in \$500 million for their new stadium.

An all-volunteer squad of Arlington residents, armed with nothing more than an understanding of economics, stepped up to the plate to stop the pro-stadium rally, but they were out-pitched. As usual, there is little reason to believe the stadium will be a financial benefit for the city or its taxpayers. Arlington residents would be better off if officials literally dumped piles of \$20 bills out of helicopters hovering above the city, University of Chicago economist Allen Sanderson says.

The facts might be on their side, but the effort to defeat the stadium project goes down swinging against the potent combination of big-league sports and mid-sized city politics. The COVID-19 pandemic

delayed the grand opening of the Rangers' new ballpark, but taxpayers have already taken the loss. **i**

BOOK

VERY IMPORTANT PEOPLE

LIZ WOLFE

Getting bottle service in a club surrounded by leggy, stilettoed models is sort of about sex—but it's mostly about status, explains sociologist Ashley Mears in her new book, *Very Important People*.

For those who don't dabble in the Miami-Manhattan-Ibiza club circuit, Mears' work uses ethnographic research, shadowing promoters and conducting interviews, to demystify how and why club promoters function as the link between aspiring models and wealthy clients. Mears knows this world from the inside, having embedded herself in the party circuit, trading her own attractiveness for research access.

She chronicles the subtle gradations in status present in the club ecosystem: Being a "paid girl"—a sex worker or cocktail waitress whose sexual services are presumed to be for sale—is frowned upon by the uncompensated "party girls," for instance. She also tries to follow the financial incentives, noting that the clubs reap profits from promoters' Rolodexes of attractive women, though she consistently discounts the ways in which the women themselves profit in the form of free food, booze, and stays in the Hamptons.

"Rituals of displaying and squandering wealth" have always intrigued anthropologists. Mears points to the *potlatch*, a competitive gift-giving ritual once common in Native American societies, to highlight the enduring nature of our tendency toward oneupmanship. The urge to be a "big man"—to amass power by being magnanimous, leaving people awed or indebted—seems ineradi-

cable over time, though it takes different surface forms.

Not every rich person engages in public displays of wealth; depending on the culture, such behavior may even be frowned upon. Still, conspicuous consumption has a long pedigree, and Mears' effort to take readers behind the velvet rope proves both fun and sobering. **i**

BOOK

IMMORTALITY, INC.

BRIAN DOHERTY

Former CNN bureau chief Chip Walter starts his book *Immortality, Inc.*, an examination of the wild dreamers and wealthy financiers striving for human immortality, at Alcor. That's where heads and bodies of the dead lie frozen, awaiting a possible future in which they can be revived.

Alcor's customers are still dead, and no magic bullet treatments have meaningfully halted or reversed the cellular and bodily decay we know as aging. The most important thing we've learned is that calorie restriction (or treatments that emulate its effects) seem the most promising, if not joyous, path to life extension.

Like space travel, human life extension has seen loads of visionary speculation spun and cash burned with promises mostly unfulfilled. Walter ends his book convinced that Silicon Valley money men and their scientist partners are indeed on the cusp of using genomics and artificial intelligence to deliver a near-endless human life; his reporting doesn't quite deliver on the optimism. But if aging is halted or reversed it will be because of the manias of his subjects, a small group of people and companies—including Google and Human Longevity Inc. (co-founded by Human Genome Project superstar Craig Venter)—with enough wealth to risk wagers on the impossible. **i**

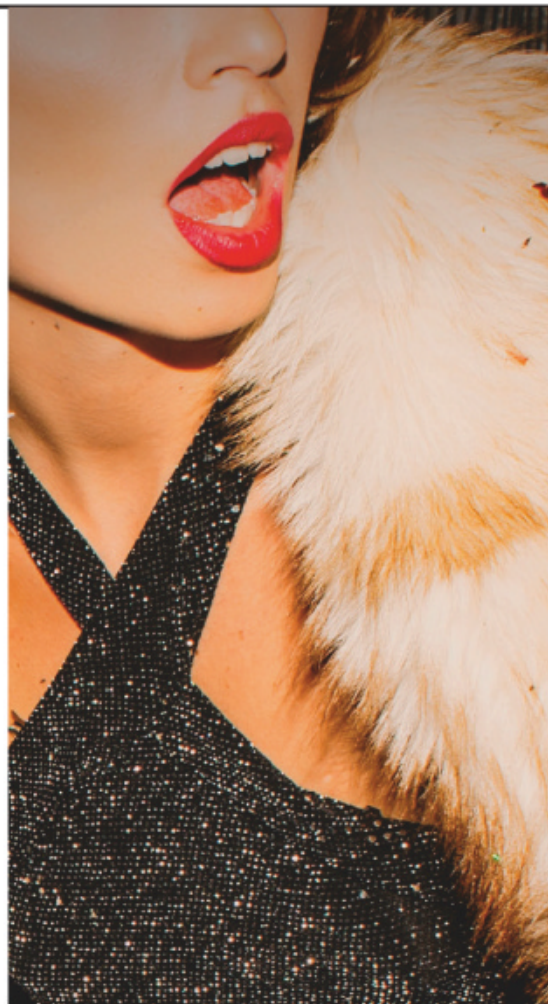
BOOK

A SONG FOR A NEW DAY

KATHERINE MANGU-WARD

Published in fall 2019, Sarah Pinsker's *A Song for a New Day* is set in a near-future where public gatherings have been radically limited by a global pandemic and threats of violence. Reading the book in 2020—which I did shortly after learning it had won this year's Nebula Award—raises questions about the author's psychic abilities.

But there's much more to recommend the novel than just its eerie prescience. The story follows the hilariously named Rosemary Laws through a series of musical speakeasies, illegal under the political regime, as she scouts new acts on behalf of her corporate virtual reality employer. But an encounter with the equally hilariously named underground rock star Luce Cannon forces her to question the rules and regulations that have driven music—and so much else that makes life worth living—underground. **i**



15

YEARS AGO

October 2005

"Scalia is hardly the only justice whose personal values bleed into his rulings. He is, however, the one most critical of his colleagues for allowing their decisions to be dictated by ideological preferences. There is no reason to believe Scalia is consciously hypocritical on any issue. Yet time and again, his strict construction of the Constitution happens to coincide, almost precisely, with some ideological preference of his own."

CATHY YOUNG

"Antonin Scalia, Judicial Activist"

"In the unlikely event that a terrorist with a bomb is picked for a search, he can simply say no and exit the system with no questions asked. (It has to be that way so the city can argue in court that the searches are voluntary.) Upon leaving the subway, he can try again at another station, pass his bag to an accomplice, or detonate his bomb at a crowded location above ground."

JACOB SULLUM

"Pansies of New York"

20

YEARS AGO

October 2000

"Rock and the larger pop music scene are so clearly a function of the wealth, innovation, and leisure time thrown off by capitalism that it should be nothing less than mind-boggling that pop stars themselves mutter incessantly about toppling the very system that pays them so

well. But to most rock stars and rock critics, the link between the music and left-wing politics is so natural and so expected that it is simply assumed."

BRIAN DOHERTY

"Rage On"

"When disco died, the record industry did not start taking new wave bands to court, demanding that they stop competing with the Bee Gees and kindred has-beens. It went hunting for every Ric Ocasek clone it could find, intent on exploiting the latest Next Big Thing until audiences found it as intolerable as disco."

JESSE WALKER

"Music for Nothing"

35

YEARS AGO

October 1985

"It doesn't matter whether censorship assumes the guise of orthodox obscenity statutes or the newer and more insidious mask of bogus civil-rights measures. The ultimate consequences are identical—less freedom, more tyranny. Dozens of local governments are now considering restrictive laws patterned after the Indianapolis ordinance. Americans should know better; censorship has flourished before, and we know that it inexorably produces sti-

fling conformity. No intelligent person should wish to repeat that tragedy."

TED CARPENTER

"Porn Busters"

"A nation's force level tends to be set by default: it is the result of political and bureaucratic struggling. For those who seek to control armaments in the world, an understanding of this 'structural' aspect of militarism is an indispensable starting point. A nation's armed forces are not only, or even primarily, the result of conscious, calculating leadership decisions, as many arms-control theorists would have it. Rather, the size and character of a nation's armed forces are shaped by the structure of the regime and the political processes within it."

JAMES PAYNE

"Marxists: They Love a Man in a Uniform"

"The humanities, whether they should or shouldn't be revived for other reasons, are not very useful. Students are not leaving the humanities in droves because they want marketable skills whereas in the humanities' heyday they were less job-oriented. They are leaving the humanities because a liberal arts education no longer offers marketable skills, as it did in the old days—the intellectual skills that men and women need to prosper in a free society."

MAX HOCUTT

"Humanities' Ills"

45

YEARS AGO

October 1975

"Libertarians who are no doubt accustomed to meeting their ideas in caricature have probably been told that in a libertarian world—one with private streets, private mass transit, private utilities of all descriptions, private ownership of redwood trees and alligators—everything would have an explicit price to it. To walk on the streets, to visit the parks, individuals would be required to make an explicit contract. That this is in fact a distortion can be seen because the real world has been kind enough to provide Walt Disney World, a contractual city which bears no resemblance to the caricature."

DAVID LEVY

"Learning Economics From Walt Disney World"

"Would you rather have a gun and not need it, or—if the state has its say—be forced into a situation where a weapon is desperately needed, but you aren't allowed to have one? This choice by the individual may soon become as extinct as the dodo bird if the state continues on its merry way of grabbing up the rights and freedoms of the individual. However, your right to own a gun, or anything else, should not be argued on the basis of some sort of special pleading to the state."

MORGAN NORVAL

"Why We Need Guns"

Steven Pinker Survives Attempted Cancellation

INTERVIEW BY RONALD BAILEY

In early July, a group of linguistics researchers published an open letter calling for the Linguistics Society of America (LSA) to revoke the organization's distinguished fellow status from linguist and cognitive psychologist Steven Pinker, author of *The Language Instinct*, *The Better Angels of Our Nature*, and *Enlightenment Now*.

The signatories, many of them graduate and undergraduate students, pointed to years-old tweets of Pinker's that they claimed revealed his racist and sexist biases. Almost immediately, a group of established scholars leapt to his defense. "The letter shows no familiarity with Pinker's work, and takes statements out of context in a way that, with the merest checking, are seen to be represented duplicitously," wrote Jerry Coyne, an evolutionary biologist at the University of Chicago. Academics from across the disciplinary and political spectrum joined Coyne in rebutting the letter, including linguist (and *Reason* contributor) John McWhorter, leftist firebrand Noam Chomsky, and formal semantics pioneer Barbara Partee.

In a conversation with *Reason* Science Correspondent Ronald Bailey on the day the LSA announced it would not take any action against him, Pinker explained what efforts like the LSA letter tell us about the state of debate in America's elite institutions.

Q: This LSA letter is an astonishing document.

A: I think it's part of a larger mindset that does not see the world as having complex problems that we fail to understand and ought to try to understand better to diagnose and treat, but rather as a kind of warfare between powerful elites and oppressed masses. In the classic Marxist analysis, these would be economic classes, but they've been transformed to racial and sexual classes.

In this mindset, analysis, debate, evidence are just tools—propaganda exercised by those in power. What has to happen is not a deeper understanding of social problems, but a wresting of power from elites and redistributing it to the disenfranchised.

Q: You've said the letter wasn't specifically about you, but it was quite targeted.

A: It was quite targeted, but it's part of a larger movement seeking monsters to destroy. That is, to look for prominent people and do "offense archeology," which is to troll through tweets and statements seeking to find evidence, however tortured, that there's some kind of prejudice behind them.

Q: The writers of the letter said that by challenging the claim that police are more likely to kill black people than to kill white people, you showed a "willingness to dismiss and downplay racist violence regardless of any evidence."

A: That's completely wrong. It's an open question to what extent police are racially biased. As a social scientist, I consider it my responsibility to try to understand that in light of the facts. You're literally committing a logical blunder if you hold a belief that police are more likely to shoot unarmed African Americans and you don't count up all the people police shoot. That is by no means a denial of the existence of racism.

There's a distinct question of whether African Americans are subject to more *sublethal* harassment, and I think your former colleague Radley Balko wrote a very good summary for *The Washington Post* that shows there is evidence of racial discrimination in harassment and manhandling and arrests. But when it comes to lethal incidents, the evidence suggests that there isn't.

Q: I'm trying to get a sense, from your point of view, of why your critics would misread what you are doing.

A: [There's a] mindset that we evaluate what people mean based on whether the underlying idea is likely to be true or false; that we should use evidence in doing so; that all of us, in large part, start from a position of ignorance when dealing with social problems; and that the imperative is to understand their causes and therefore arrive at the best possible solutions.

There's an alternative mindset in which the content of someone's statements and attempts to evaluate them with respect to evidence are beside the point. The imperative is not to examine ideas that may be true or false; it is to maximize passion and solidarity. Because the elites are already in a position of power and the downtrodden have only their own solidarity and emotional passion as countermeasures, therefore anything that undermines the passion and solidarity is harmful in the struggle. And it is a struggle! It's a kind of warfare that is zero-sum, and the imperative is to change the power balance. 

This interview has been condensed and edited for style and clarity.





Minnesota State Patrol trooper Albert Kuehne has been charged with two counts of felony stalking after he responded to a single-car wreck involving a woman detained on suspicion of driving under the influence. Prosecutors say Kuehne took the woman's phone, found nude photos, and then messaged the photos to his own phone while she was being treated by paramedics.

The University of Queensland, a public university in Australia, is under fire for an economics class critics are calling propaganda. The class is part of a Chinese government-funded effort to build ties between that country and Western universities. The course reportedly refers to "terrorist" activities of Uighurs, an ethnic minor-

ity being repressed by the Chinese government, and asks students to consider whether pro-democracy protests in Hong Kong amount to terrorism.

A state investigation of a Massachusetts veterans home where at least 76 residents have died from COVID-19 has revealed errors that Gov. Charlie Baker (R) called "horrific and tragic." The biggest mistake, according to the report, happened when the state-operated facility in Holyoke combined two dementia units into one. The move placed more than 40 veterans, including some who had already tested positive for the virus, into a space meant for 25.

Police in Vienna, Austria, fined a man 500 euros

(about \$564) for releasing "a massive intestinal wind in the immediate vicinity of the officers." Police say the man "had already behaved in a provocative and uncooperative manner" when they approached him as he sat on a park bench and tried to talk to him.

After a public outcry, Fisheries Queensland in Australia says it will not fine a man who rescued a baby humpback whale tangled in a shark net. After the rescue, the agency initially served the man with two notices for entering the area around the nets without permission.

Shenandoah County, Virginia, Sheriff Timothy Carter has apologized to Pastor Leon McCray after McCray was falsely arrested by deputies. McCray, who is black, called 911 after a white family allegedly attempted to dump a refrigerator on his property and then attacked him when he tried to stop them. When deputies arrived, they spoke only with the family, then arrested McCray for brandishing a firearm. Those charges were later dropped.

A code

enforcement officer in Aurora, Canada, issued a woman a fine of 880 Canadian dollars (about \$650) for "standing too long" in a park



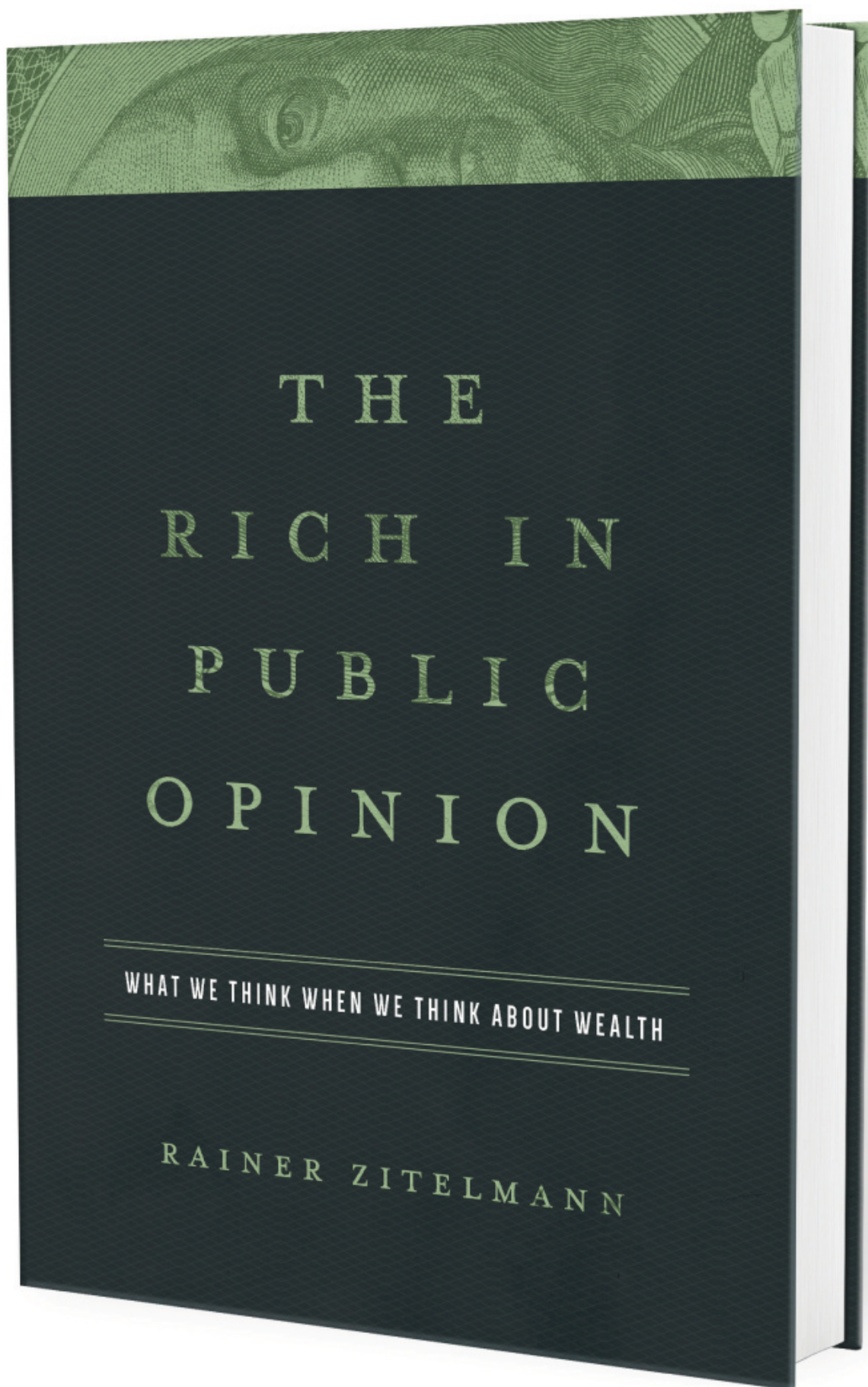
under emergency coronavirus restrictions.

Courtney Lancaster of Baltimore County, Maryland, says an officer came to her home to search her 11-year-old son's room because, during a video lesson, a teacher at Seneca Elementary School saw a BB gun hanging on the wall. The teacher took a screenshot and showed it to the school security officer, who called the cops. Lancaster says the school's principal told her having a gun present in a video lesson is the same thing as bringing one to school.

—CHARLES OLIVER



New from the Cato Institute



In *The Rich in Public Opinion: What We Think When We Think About Wealth*, historian and sociologist Rainer Zitelmann examines attitudes about wealth and the wealthy in four industrialized Western countries: Germany, the United States, France, and Great Britain. This wide-ranging book is filled with never-before-seen data, rich with insights into why we view wealth the way we do and how it impacts our societies, our economies, our prejudices, and our politics. These data help contextualize many of the political debates common in the western world and highlight the differences between policy and election outcomes in the U.S. versus that of many European countries.